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**THE LONG ROAD TO JUSTICE:
Establishing the Rule of Law in Post-War
El Salvador and Guatemala**

by
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December, 1997

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Establishing the Rule of Law in Post-War El Salvador and Guatemala**

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Submitted in partial fulfillment of the
requirements for the degree of

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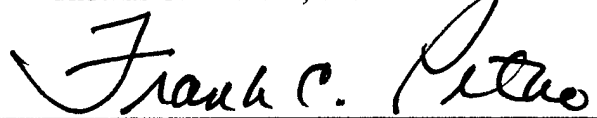
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ABSTRACT

After years of virtual civil wars, insurgents in El Salvador (1992) and Guatemala (1996) signed Peace Accords with their governments.

This thesis examines the peace processes in El Salvador and Guatemala and focuses on the establishment of the rule of law after years of civil war as a precondition for democratic consolidation. The issue areas investigated are: the redefinition of the role of the armed forces in the state; the demilitarization of the police forces; judicial reform; and how these states deal with past human rights violations which have occurred during the wars, with particular emphasis on the issue of impunity.

The thesis argues that while significant progress has been made in establishing the rule of law since the signing of the Peace Accords, there are still areas of concern which may forestall democratic consolidation. The primary mission of the militaries of both countries has been shifted to external defense. Civilian police forces have been established and they have been removed from military control. Despite these facts, the military is still playing a limited internal policing role in support of the police forces. Judicial reform has progressed in both countries but this area is still in need of more attention and funding. Human rights abuses and the issue of impunity have received much attention in both countries, but the passage of amnesty laws in both countries, which prevent the prosecution of those who committed human rights abuses during the civil wars, has perpetuated a sense of military and governmental impunity.

TABLE OF CONTENTS

I. INTRODUCTION: PEACE AND DEMOCRACY IN CENTRAL AMERICA	1
A. TRANSITIONS IN CENTRAL AMERICA	1
B. SIGNIFICANCE OF THIS STUDY	6
II. DEMOCRATIZATION AND THE RULE OF LAW	9
A. METHODOLOGY	9
B. DEMOCRATIZATION AND THE RULE OF LAW	10
1. <i>Variables which affect democratic transitions</i>	10
2. <i>Towards democratic consolidation</i>	17
C. THE RULE OF LAW AND DEMOCRATIC CONSOLIDATION	23
D. ELEMENTS OF THE RULE OF LAW	24
III. THE CASE OF EL SALVADOR	29
A. HISTORICAL BACKGROUND.....	29
B. THE SALVADORAN PEACE PROCESS	31
C. ELEMENTS OF THE RULE OF LAW IN EL SALVADOR	33
1. <i>Redefining the role of the armed forces of El Salvador</i>	33
2. <i>Demilitarization of the Salvadoran police forces</i>	35
3. <i>Judicial reform in El Salvador</i>	39
4. <i>Human rights and impunity in El Salvador</i>	41
D. CONCLUSION.....	46
IV. THE CASE OF GUATEMALA	49
A. HISTORICAL BACKGROUND.....	49
B. THE GUATEMALAN PEACE PROCESS.....	51
C. ELEMENTS OF THE RULE OF LAW IN GUATEMALA.....	53
1. <i>Redefining the role of the armed forces of Guatemala</i>	54
2. <i>Demilitarization of the Guatemalan police forces</i>	56
3. <i>Judicial reform in Guatemala</i>	58
4. <i>Human rights and impunity in Guatemala</i>	60
D. CONCLUSION.....	64
V. CONCLUSION: THE STATE OF THE RULE OF LAW IN GUATEMALA AND EL SALVADOR	67
A. THE ELEMENTS OF THE RULE OF LAW	67
1. <i>Redefining the role of the armed forces in the state</i>	67
2. <i>Demilitarization of the police forces</i>	69
3. <i>Judicial reform</i>	71
4. <i>Human rights and the issue of impunity</i>	72
B. THE RULE OF LAW AND DEMOCRATIC CONSOLIDATION.....	73
BIBLIOGRAPHY	77
INITIAL DISTRIBUTION LIST	83

EXECUTIVE SUMMARY

While many factors affect a country's transition to democracy, and ultimately the consolidation of democracy, the focus of this thesis will be on the specific factors which affect the establishment of the rule of law as a pre-condition for the consolidation of democracy. In the cases of El Salvador and Guatemala, four overriding themes can be distilled from a comparison of the peace processes and the Peace Accords between the two countries. These themes, hereafter referred to as elements of the rule of law, are: 1) demilitarization of the police forces; 2) redefinition of the role of the armed forces in the state; 3) judicial reform; and 4) how these states have dealt with the human rights violations which occurred during the wars, with particular emphasis on the issue of impunity.

These elements of the rule of law are just a few of the issues which must be researched to determine whether the rule of law truly exists in a democracy. But these particular elements were issues of primary importance in El Salvador and Guatemala during their peace negotiations. This was proven by the lengthy discussion of each of these areas in the Salvadoran and Guatemalan Peace Accords, and by the fact that these elements continue to be topics of heated debate during the democratic consolidation occurring in both countries.

Despite promising signs of political reconciliation and the reduction of military prerogatives, there is still a significant amount of dissatisfaction with both governments' abilities to confront the current crime wave which is sweeping across the region. Increasingly, there appears to be a breakdown in the respect for the rule of law in El

Salvador and Guatemala. The government's inability to provide for public security in both countries could lead to a breakdown of public confidence in the regime. Once this occurs, the military may be tempted, as in the past, to restore order by intervening politically. While there are no signs of this happening in the near future, the recent history of military involvement in politics makes this outcome plausible.

The establishment of the rule of law in both of these countries is a necessary precondition for democratic consolidation to occur. In order to build this respect, both governments must address the shortcomings which have been identified in this thesis. These shortcomings, in order of severity and importance, are: 1) the poor performance of the government in providing for public security; 2) the lack of significant improvement of the judicial processes; 3) the use of the military in an internal policing role, no matter the fact that this is constitutionally legal; and 4) the pervasive attitude of impunity which still infects many government, judicial and military officials. Until these problems are fully and adequately addressed both El Salvador and Guatemala should still be considered in transition to democracy.

I. INTRODUCTION: PEACE AND DEMOCRACY IN CENTRAL AMERICA

A. TRANSITIONS IN CENTRAL AMERICA

Long an area of instability and military rule, Central America became one of the central battlegrounds of the Cold War during the 1980's. Civil wars raged in El Salvador and neighboring Guatemala, pitting Communist insurgents supported by the Eastern Bloc against the right-wing, virulently anti-Communist governments which were supported by the United States. It was into this environment which Samuel Huntington's "third wave" of democracy washed ashore in the 1980's. Huntington described the numerous transitions from authoritarian rule to democracy in the late twentieth century as the third in a series of waves which have moved the majority of states in the world towards democratic governance.¹ Both El Salvador and Guatemala began their transitions to democracy in this decade. Unfortunately, in both cases, the transitions to democracy were accompanied by civil wars.

The rule of law had long been one of the central points of contention in both conflicts. El Salvador and Guatemala have had long histories of military involvement in politics and a breakdown of the rule of law. El Salvador had a military president for most of the twentieth century, from 1931 to 1979. Guatemala, since the overthrow of President Jacobo Arbenz in 1954 by a coup sponsored by the U.S. Central Intelligence Agency (CIA), has had alternating weak civilian presidents and strong-armed military rulers.

¹ Huntington (1991), pp. 22-3.

The United States, from the 1960's through the 1970's, viewed both countries as bulwarks against communism in Central America and generally supported the governments in power. In the mid-1970's, however, this all changed. At the end of President Gerald Ford's term a new emphasis was placed on human rights in the United States' foreign policy. Henry Kissinger, the U.S. Secretary of State, made this clear during a speech to the Organization of American States in June 1976. Kissinger's opening sentence was:

One of the most compelling issues of our time, and one which calls for the concerted action of all responsible peoples and nations, is the necessity to protect and extend the fundamental rights of humanity.²

President Jimmy Carter was elected in 1976 on a campaign that promised to support human rights throughout the world. Carter's national security policy almost immediately began to reflect this emphasis on human rights. Cyrus Vance, Carter's Secretary of State, immediately began to expound on the administration's policy on human rights, with particular emphasis on Latin America. In June, 1977, shortly after President Carter's inauguration, Secretary of State Vance, in the following quote from a speech to the General Assembly of the Organization of American States, spoke about the importance of respecting human rights even in the face of internal unrest and civil war:

If terrorism and violence in the name of dissent cannot be condoned, neither can violence that is officially sanctioned. Such action perverts the legal system that, alone, assures the survival of our traditions. The surest way to defeat terrorism (and other internal subversion) is to promote justice in our societies - legal, social and economic justice. Justice that is summary undermines the future it seeks to promote. It produces only more violence, more victims...³

² Schoultz (1981), p. 111.

³ Ibid, pp. 115-6.

With this renewed emphasis on human rights as a pillar of U.S. foreign policy, both El Salvador and Guatemala came under increasing fire from the United States, in particular the United States Congress, over their human rights records. Because of this increased criticism, Guatemala unilaterally renounced U.S. military aid, in an attempt to limit inquiry into their military's human rights record. Guatemala turned to Israel for most of its military equipment, but it also received aid from Argentina, Taiwan and South Korea. Guatemala was eligible, however, to continue to buy military equipment from the United States through the Foreign Military Sales program. The laws which allowed for restrictions on the supply of U.S. military *aid* to countries based on their human rights records did not apply to the *sale* of U.S. equipment. Consequently, while Guatemala continued to buy equipment from the United States, the U.S. government had much less influence over the conduct of the Guatemalan Armed Forces than it did when that country was dependent on receiving military aid from the United States.

El Salvador, on the other hand, drew closer to the United States as the result of the outbreak of civil war in 1980 and the fact that the Salvadoran military became utterly dependent on the receipt of U.S. military aid and training, which was tied to democratization and human rights awareness. With the success of the Sandinista revolution in Nicaragua in 1979, the consolidation of numerous Salvadoran guerrilla organizations into the Farabundo Martí National Liberation Front (FMLN) in 1980, and the election of U.S. President Ronald Reagan in 1980, the fight against communism took center stage in Central America. President Reagan decided to draw a line in El Salvador and fight against the further spread of communism throughout the region. This new focus of U.S. foreign policy, on the paramount importance of Central America in the global

confrontation with the communist bloc, is reflected in the following 1983 quote from President Reagan:

If Central America were to fall (to the Communists), what would the consequences be for our position in Asia, Europe, and for alliances such as NATO? If the United States cannot respond to a threat near our own borders, why should Europeans or Asians believe that we're seriously concerned about threats to them? If the Soviets can assume that nothing short of an actual attack on the United States will provoke an American response, which ally, which friends will trust us then?⁴

With the guerrillas winning many initial confrontations, the Salvadoran military realized that it desperately needed U.S. assistance in order to defeat the insurgency. This dependency on external military aid ultimately forced a democratic opening in El Salvador, due to the pressure from the U.S. Congress and other institutions which linked continued support to democratic and human rights reforms. These external pressures, and the fact that the military was distracted from politics by the guerrilla war, ultimately led to significant political reforms. The result of these reforms was the election of President Jose Napoleon Duarte, from the centrist Christian Democratic Party, in relatively free and fair elections in 1984. These were the first democratic elections held in El Salvador since 1972 (which had been overturned).

Peace talks were held during the course of both civil wars. The first serious peace talks between the FMLN and the government of El Salvador were held in 1984, shortly after the election of President Duarte. It took many more years of negotiations, and many concessions on both sides, before these talks bore fruit.

Similarly, in Guatemala, the first discussion of peace talks came shortly after the

⁴Schoultz, Smith and Varas (1994), p.p. 34-5.

election of President Vinicio Cerezo in February, 1986. The Guatemalan National Revolutionary Union (URNG), the name of the umbrella organization of the communist insurgents and political parties, proposed peace negotiations in May, 1986. These negotiations, the guerrillas demanded, would be based on several conditions, including the demilitarization of society, the cleansing of the security forces through trials of those accused of human rights abuses, and the restoration of basic democratic freedoms in the war zones. The first face-to-face talks between the government and the URNG in twenty-seven years occurred in Madrid, Spain in August, 1987. These talks soon ended when the government launched a massive offensive in late 1987. It was not until the election of President Jorge Serrano Elias in 1991 that credible peace discussions began. An agreement on the timetable for the peace negotiations was set in May, 1994.

As peace negotiations continued in both countries, however, changes in the global balance of power, which had fueled both civil wars, forced all sides in the conflicts to accept the inevitable and reach agreements which led to peace, and ultimately a greater level of democratization, in both countries. With the end of the Cold War in 1989, both sides in the Salvadoran and Guatemalan conflicts saw their sources of support begin to collapse. When it became clear that the war was not winnable by either side, El Salvador's twelve year civil war finally ended with the signing of Peace Accords between the government and the Farabundo Martí National Liberation Front (FMLN) in Mexico City on January 16, 1992. Guatemala's brutal thirty-six year civil war, during which the government always held the upper hand, ended on December 29, 1996 with the signing of Peace Accords between the government of President Alvaro Arzú and the rebel URNG in Oslo, Norway. With the signing of the Peace Accords, both of these countries started

down a long path of reconciliation and rebuilding. As part of these processes of reconciliation and rebuilding both countries hoped to accelerate the transitions to democratic consolidation that had begun in the 1980's during their civil wars.

B. SIGNIFICANCE OF THIS STUDY

While many factors affect a country's transition to democracy, and ultimately the consolidation of democracy, the focus of this thesis will be on the specific factors which affect the establishment of the rule of law as a pre-condition for the consolidation of democracy. In the cases of El Salvador and Guatemala, four overriding themes can be distilled from a comparison of the peace processes and the Peace Accords between the two countries. These themes, hereafter referred to as elements of the rule of law, are: 1) demilitarization of the police forces; 2) redefinition of the role of the armed forces in the state; 3) judicial reform; and 4) how these states have dealt with the human rights violations which occurred during the wars, with particular emphasis on the issue of impunity.

These elements of the rule of law are just a few of the issues which must be researched to determine whether the rule of law truly exists in a democracy. But these particular elements were issues of primary importance in El Salvador and Guatemala during their peace negotiations. This was proven by the lengthy discussion of each of these areas in the Salvadoran and Guatemalan Peace Accords, and by the fact that these elements continue to be topics of heated debate during the democratic consolidation occurring in both countries.

Juan Linz and Alfred Stepan developed a working definition of a consolidated democracy in their 1996 book Problems of Democratic Transition and Consolidation. In

their view, a consolidated democracy can be defined as a combination of the three dimensions listed below:

- Behaviorally, a democratic regime in a territory is consolidated when no significant national, social, economic, political or institutional actors spend significant resources attempting to achieve their objectives by creating a non-democratic regime or turning to violence or foreign intervention to secede from the state.
- Attitudinally, a democratic regime is consolidated when a strong majority of public opinion holds the belief that democratic procedures and institutions are the most appropriate way to govern collective life in a society such as theirs and when the support for anti-system alternatives is quite small or more or less isolated from the pro-democratic forces.
- Constitutionally, a democratic regime is consolidated when governmental and non-governmental forces alike, throughout the territory of the state, become subjected to, and habituated to, the resolution of conflict within the specific laws, procedures, and institutions sanctioned by the new democratic process.⁵

This thesis will analyze the sections of the Peace Accords in El Salvador and Guatemala that were designed to re-establish a system of justice and ensure the rule of law in both countries. The progress made in the implementation of the sections of the Accords which deal with the rule of law will also be examined. This examination will reveal how much progress El Salvador and Guatemala have made in the establishment of the rule of law as it relates to their democratization and processes. It will investigate the extent to which both countries have made gains in the behavioral, attitudinal, and constitutional dimensions of a consolidated democracy. While the establishment of the rule of law in these countries will not be a sufficient cause of democratization, it is necessary that the rule of law exist before consolidation can occur. It will be argued that although El Salvador and Guatemala have both made significant progress in their

⁵ Linz and Stepan (1996).

attempts to establish the rule of law, there are still significant problems in each country which may forestall the consolidation of their democratic transitions.

A comparison of the experiences of these countries should provide some "lessons learned" for states which will go through this process in the future. This information could also be used by the United States or international organizations when they assist other states that are attempting to establish the rule of law after a civil war, such as in the case of Angola.

II. DEMOCRATIZATION AND THE RULE OF LAW

A. METHODOLOGY

This thesis will examine two case studies, El Salvador and Guatemala, and their transitions from authoritarian governments engaged in civil wars, to democratic governments which pursue an end to their civil wars and seek to establish respect for the rule of law in their countries. The thesis compares democratization processes, the language of the Peace Accords, and the implementation of the Accords between El Salvador and Guatemala. It examines the sections of each country's Peace Accord which deal with the establishment of a system of justice and the establishment of the rule of law. The four specific elements of the rule of law which are investigated are: 1) demilitarization of the police forces; 2) redefinition of the role of the armed forces in the state; 3) judicial reform; and 4) how these states have dealt with the human rights violations which occurred during the wars, with particular emphasis on the issue of impunity. Each of these areas must be addressed if the governments of El Salvador and Guatemala hope to establish the faith of their citizens in the rule of law and the ability of the state to establish a fair and equitable system of justice.

This chapter contains a discussion of the recent political science literature on democratization and the rule of law. Chapter III is the El Salvador case study, which includes a brief history of the civil war and the peace process. The specific language of the Peace Accords is examined, with particular emphasis on the portions of the Accords which deal with the four specific areas mentioned above. Chapter IV contains the Guatemalan case study and mirrors the structure of Chapter III. Chapter V is the

conclusion and consists of an examination of the progress both countries have made in establishing the rule of law since the signing of the Peace Accords.

This chapter will analyze the gains both countries have made along their path towards democratic consolidation in terms of the four elements of the rule of law mentioned above. This analysis will center around the reduction of the role the military plays within various sectors of society. The reduction of the military's role in society is one of the central issues of agreement in the Peace Accords. This agreement provided a consensus upon which these countries could build in order to continue their process of democratic consolidation.

B. DEMOCRATIZATION AND THE RULE OF LAW

1. Variables which affect democratic transitions

Many interacting variables come into play during transitions from authoritarian to democratic rule. While no two democratic transitions are going to be the same, and the relative strength of these variables may be different in each situation, the overall health of a democratic transition can be deduced from studying the combined effects of each of these variables. Larry Diamond, Juan Linz and Seymour Martin Lipset, in their 1995 book Politics in Developing Countries: Comparing Experiences with Democracy, define a number of variables which interact in the process of democratic transition. These variables are: the legitimacy of the new democratic regime; the economic and political performance of the regime; the quality and effectiveness of political leadership; the development of a political culture within the state; the social structure and socioeconomic development of the country; the existence and performance of civil society; the relationship between the state and society; political institutionalization of

parties and the party system, electoral systems, constitutional structure of the state, and the legislatures and courts; ethnic and regional conflict; military involvement in politics; and international factors.⁶ While all of these factors, and more, interact in the process of democratic transition, this thesis will examine just a few of these variables which pertain to the establishment of the rule of law and an equitable system of justice in El Salvador and Guatemala. It is absolutely essential for the rule of law to exist in a democracy, both in the form of the citizenry's respect for the laws of the land, and in the political leadership's commitment to enforce and follow the laws.

Legitimacy, the first variable in Diamond, Linz and Lipset's work, exists when the populace and political society of the country believe that the current form of governance, in this case democracy, is the best (or the least evil) form of government, for that country. In an earlier work, Juan Linz expounded on the importance of legitimacy in a democracy. Linz stated that legitimacy is:

... the belief in those legally elevated to authority to issue certain types of commands, to expect obedience, and to enforce them, if necessary by the use of force. 'In a democracy, citizens are free to disagree with the law, but not to disobey it, for in a government of laws, and not of men, no one however prominent or powerful, and no mob, however unruly or boisterous, is entitled to defy them.'⁷

Ultimately, in the cases of El Salvador and Guatemala, the ability of democracy to survive will depend on the ability of their leaders to demand and enforce respect for the rule of law.

Performance of the new regime is the second variable in Diamond, Linz and Lipset's work. In order for the regime to gain and maintain legitimacy, it must be able to

⁶ Diamond, Linz and Lipset (1995), pp. 9-66.

⁷ Linz (1978), p. 17.

perform efficiently and effectively in most areas of governance. Most new democratic regimes will have a "honeymoon period" where the citizenry will allow a certain amount of disorganization and inefficiency, but this time will quickly pass. As the authors state:

Democratic legitimacy... is shaped (particularly in the early years of a democracy) by the performance of the democratic regime, both economically and politically (through the 'maintenance of civil order, personal security, adjudication and arbitration of arguments'...) Historically, the more successful a regime has been in providing what people want, the greater and more deeply rooted its legitimacy has tended to be...⁸

Political leadership of the new regime is the third variable. In order to survive in the face of pressure from adherents to the old system or others who are vying for power, the leaders of a new democracy must be adept in the skills of compromise and negotiation. No matter how they gained office, the new leaders must not advocate the use of violence or other antidemocratic or unconstitutional means to maintain power. New leaders must demonstrate that they have become loyal to the democratic system and will only permit their opponents and detractors to engage in political discourse as members of a loyal opposition. They must also require that various governmental institutions, most notably the military, affirm their loyalty to the new regime and the democratic process. This may involve a series of complex negotiations or compromises which allow these institutions to maintain some of their prerogatives within the system, as long as maintaining these prerogatives does not present a significant threat to the stability of the new regime. These compromises may very likely not be popular with the public, particularly when the institutions concerned have been implicated in violations of the law

⁸ Diamond, Linz and Lipset, (1995), p. 10.

or human rights during the previous regime, as is the case with the military forces of both Guatemala and El Salvador.

Diamond, Linz and Lipset identify civil society as the next variable in their study.

They define civil society as:

... the realm of organized social life that is voluntary, self-generating, (largely) self-supporting, autonomous from the state, and bound by a legal order or set of shared rules. It consists of a vast array of organizations, both formal and informal: interest groups, cultural and religious organizations, civic and developmental associations, issue-oriented movements, the mass media, research and educational institutions... (that) are concerned with and act in the public realm... and encompass and respect pluralism and diversity.⁹

Civil society's primary function is to act as a watch-dog on the state's actions.

They are quite often concerned with very narrow interests and act as the voices of particular segments of the nation's polity. Freedom of speech and association are the cornerstones upon which civil society is built. If there are any limits placed on these two basic human rights, then civil society can not function to its fullest. It is the duty of a democratic government to ensure that civil society is well developed and fully functioning so that it can act as part of the system of checks and balances upon which a democracy is built.

Political institutions; including political parties and the party system, electoral systems, the constitutional structure of the government, and the legislature and courts, make up the next factor which affects democracy in Diamond, Linz and Lipset's study. Each of the political institutions listed make up part of the system of democracy and one of their main functions is to perpetuate the continuation of the system. As the functioning

⁹ Ibid, p. 27.

of the system becomes predictable, the faith of the citizens in the individual institutions and the system as a whole grows. This faith generates an attitude of ownership in the citizenry which leads to a desire to protect and maintain the democratic system. The authors claim that:

... because institutions structure behavior into stable, predictable, and recurrent patterns, institutionalized systems are less volatile and more enduring... Acting within well-established and normatively shared institutional settings, individuals and groups confine themselves to legal and constitutional methods that eschew the use or threat of force.¹⁰

Perhaps the most destructive force which could affect the populace's faith in these institutions is corruption. Corruption in any of these institutions weakens the overall system due to the way the prerogatives and responsibilities of each of these institutions function as checks and balances on other parts of the system.

The authors place a lot of emphasis on the role the judiciary can play in a democracy. They argue that a "powerful judiciary can be the bulwark of a democratic constitution, defending both its integrity and its preeminence as the source of democratic legitimacy... the judiciary is the ultimate guarantor of the rule of law and thus of the accountability of rulers to the ruled, which is the premise of democracy."¹¹

Unfortunately, many of the judicial systems in the developing world, including El Salvador and Guatemala, are weak and ineffective. This is the result of a variety of factors, including a lack of training, poor compensation for lawyers and judges, and politicization. All of these issues must be addressed, and to a certain extent they have

¹⁰ Ibid, p. 33.

¹¹ Ibid, p. 41.

been addressed in El Salvador and Guatemala, if a new democracy is to complete the process of democratic consolidation.

The military, and the prerogatives and roles they play in society, is the next variable. The military's power and influence in some societies is much greater than in others. Depending on the military's role under the previous government, the new democratic regime may be forced to negotiate with the military in order to reduce its prerogatives within the government. As is the case in El Salvador and Guatemala, the military in many developing countries became greatly involved in the internal politics of the state. Diamond, Linz and Lipset claim that "once military role expansion occurs, it tends to advance, or at least endure, placing numerous areas of public policy under unaccountable military control."¹² Negotiations to refocus the military's role to one that is compatible with democracy may be very difficult. But due to the threat the military poses to the stability of the regime because of its control of the implements of force, the new government must ensure that the military is brought under objective civilian control¹³ as soon as possible. The crucial nature of accomplishing this is made clear by Diamond, Linz and Lipset in this passage:

New insecure democracies must therefore find ways to strengthen (or begin to develop) civilian control over the military while constraining the military increasingly strictly to the core national security functions

¹² Ibid, p. 47.

¹³ Samuel P. Huntington first defined the concept of objective civilian control of the military in his classic 1957 work *The Soldier and the State*. Objective civilian control is defined on pp. 80-85 of the 1985 printing of this book as: "Civilian control in the objective sense is the maximizing of military professionalism. More precisely, it is that distribution of political power between military and civilian groups which is most conducive to the emergence of professional attitudes and behavior among the members of the officer corps... Objective civilian control achieves its end by militarizing the military making them the tool of the state... A highly professional officer corps stands ready to carry out the wishes of any civilian group which secures legitimate authority within the state... Objective civilian control not only reduces the power of the military to the lowest possible level vis-a-vis all civilian groups, it also maximizes the likelihood of achieving military security."

appropriate for it to perform in a democracy: defense of external boundaries and sea lanes; combating of armed threats to the civilian, constitutional order from terrorism, insurgency, and the drug trade; readiness for emergency disaster relief... This requires reducing military influence over nonmilitary issues within the state and eliminating military ownership of, or control over, nonmilitary institutions.¹⁴

The last variable Diamond, Linz and Lipset discuss is the role the international community plays in the democratization process. The United Nations and other multinational organizations, as well as numerous non-governmental organizations, have become intimately involved in many of the recent democratic transitions. This new activism on the part of the international community was made possible by the end of the Cold War and the emergence of the United States as the sole superpower. In El Salvador and Guatemala, the collapse of the Cold War, and hence the decline in support for the insurgent forces (the FMLN in El Salvador and the URNG in Guatemala) were receiving from the Eastern Bloc, was one of the prime factors which drove the peace processes. Also, the United Nations has played a large role as both mediator and guarantor of the Peace Accords in each of these countries.

Each of these variables individually, and all of them collectively, affect both the speed and quality of democratic transitions. El Salvador and Guatemala have made real progress in each area mentioned above. The Peace Accords which were signed in both countries represented a certain level of democratic development from which they could begin their climb towards democratic consolidation. Neither country has completed their transition to democracy, because there are certain areas where more progress must be made.

¹⁴ Diamond, Linz and Lipset, (1995), p. 47.

Diamond, Linz and Lipset point out that there have been many qualifiers placed on the types of democracies which have emerged as a result of Huntington's third wave of democratization, and El Salvador and Guatemala's democracies can be described as one of these types:

... low-quality democracy. Low intensity democracy, poor democracy, and delegative democracy are terms that have been used - primarily in the Latin American context - to describe a system that may have fair, competitive and open elections; authentic power for elected officials; freedom of expression and of the press (more or less); and at least some independent organizations and media, but that nevertheless lacks accountability, responsiveness, and institutional balance and effectiveness between elections.¹⁵

While there is no perfect democracy, there are states which have progressed beyond the transition stage and can be considered consolidated democracies. The next section of this thesis will discuss the qualities of a consolidated democracy, and apply them to El Salvador and Guatemala.

2. Towards democratic consolidation

Democratization is a process. At what point does a transitioning democracy become a consolidated democracy? According to Juan Linz and Alfred Stepan a completed democratic transition occurs when:

... sufficient agreement has been reached about political procedures to produce an elected government, when a government comes to power that is the direct result of a free and popular vote, when this government *de facto* has the authority to generate new policies, and when the executive, legislative and judicial power generated by the new democracy does not have to share power with other bodies *de jure*.¹⁶

El Salvador and Guatemala, as will be argued in later chapters of this

¹⁵ Ibid, p. 8.

¹⁶ Linz and Stepan (1996), p.7.

thesis, are still in the transition phase of the democratization process. While they have had free and fair elections and the elected officials have assumed office, in both countries there are still problems with excessive executive influence over the judicial and legislative branches of government. Also, in the case of Guatemala, the military still holds many prerogatives and is not fully under civilian control. These are just a few of the problems which still exist in the two countries which will not allow them to be classified as consolidated democracies.

Once the transition phase is complete and the country becomes a consolidated democracy, Linz and Stepan define five arenas of political life which must be in place for a consolidated democracy to survive. These five arenas (which are an amalgamation of many of the factors mentioned by Diamond, Linz and Lipset in Politics in Developing Countries) are: 1) a strong civil society; 2) a political society; 3) a respect for the rule of law by both the government and the citizens; 4) a functioning and useful state bureaucracy; and 5) an institutionalized economic society.¹⁷ As can be seen in this list, respect for the rule of law has been identified by the authors as a necessary precondition which must exist before a democracy can be considered consolidated. The authors claim that "a rule of law embodied in a spirit of constitutionalism is an indispensable condition"¹⁸ for the development of an effective political society and an independent civil society. While the essential elements of each of these arenas of political life were addressed in the Peace Accords in El Salvador and Guatemala, this thesis will focus on

¹⁷ Ibid.

¹⁸ Ibid, p. 10.

identifying particular aspects of the third (rule of law) arena which must be more fully developed in order to establish a functioning system of justice and respect for the rule of law in the two countries. I argue that the progress made in this arena, in terms of the elements of the rule of law, can be used as an indicator of the progress of democratic consolidation in both countries. Indeed, given the history of authoritarianism and lack of respect for the law, the establishment of the rule of law may be the central element in the consolidation of democracy in El Salvador and Guatemala.

Military participation in domestic politics has been an endemic problem throughout Latin America. This situation is unacceptable in a democracy, where the military should be under objective civilian control and not play a significant role in the internal political decisions of a country. As was discussed earlier, the Salvadoran and Guatemalan militaries have historically had a large amount of influence in the domestic political arenas of their countries. Alfred Stepan, in his earlier book Rethinking Military Politics, defined military prerogatives as areas where:

... the military, as an institution assumes they have an acquired right or privilege, formal or informal, to exercise effective control over its internal governance, to play a role within extra-military affairs within the state apparatus, or even to structure relationships between the state and political or civil society.¹⁹

Stepan defined numerous areas of political society where the influence of the military, or prerogatives, could be measured. The level of prerogatives the military holds within the government can be used to analyze the state of civil-military relations in a particular country. If the military held a high level of prerogatives, then it was virtually

¹⁹ Stepan (1988), p. 93.

impossible for that country to be considered democratic because the military was not under civilian control. As the amount of prerogatives declined and the elected civilian government began to gain more control over the military, then the country could be considered as making progress towards democratization.

While Stepan's book dealt specifically with the military's role in the political systems of Brazil, Argentina and Uruguay, the situations in El Salvador and Guatemala were very similar. In the 1970's and 1980's the militaries of El Salvador and Guatemala were in control of many facets of the governments of their countries. In Guatemala a military general was always the declared leader of the country. In El Salvador, although the head of state was frequently a civilian, he was strongly backed by the military. In the early 1980's, ARENA emerged as a political party based on a partnership between the military leadership and right-wing political leaders. ARENA has been the dominant political party in El Salvador since its inception.

As a consequence of the Salvadoran and Guatemalan Peace Accords, the level of prerogatives the military held in society was significantly reduced. These reductions in prerogatives, which were mandated by the Accords, were the first significant steps in the democratization process in that they started the process of bringing the militaries of both countries under civilian control. The Peace Accords were primarily concerned with three particular prerogatives, as defined by Stepan, which had to be drastically reduced in both countries in order to continue the democratization process. These three prerogatives were: 1) the constitutionally sanctioned independent role the military played in the political system; 2) the role the military played in police functions; and 3) the interaction

of the military with the judicial system.²⁰ This thesis is concerned with analyzing the reduction in prerogatives in each of these areas, as a result of the Peace Accords, and how these reductions have affected democratic consolidation in El Salvador and Guatemala. Table 2.1 contains a summary of the prerogatives which the militaries held in El Salvador and Guatemala before the Peace Accords.

Table 2.1: Military Prerogatives Before Peace Accords in El Salvador and Guatemala

	El Salvador	Guatemala
Constitutionally sanctioned independent role of the military in political system	Military given constitutional role of maintaining internal law and order	Military given constitutional role of maintaining internal law and order
Role the military played in police functions	Police under command of the military	Police operations under the control of the military
Interaction of the military with the judicial system	Military personnel could not be charged with any offense in civilian courts	Military personnel could not be charged with any offense in civilian courts

Source: Author; based on Stepan's Rethinking Military Politics

In terms of the first prerogative, both El Salvador and Guatemala's constitutions allocated primary responsibility for internal law and order to the military and also gave the military wide latitude in determining the course and conduct of the counterinsurgency campaigns against the guerrillas.²¹ With the transition to democracy, however, this situation had to be changed in order for the military to be effectively controlled by a democratically elected civilian government.

In terms of the military's interaction with the police forces of the state, both countries also rank high in prerogatives. Stepan saw the indicators of a high level of prerogatives in this area as being when the "police (were) under the overall direct

²⁰ Ibid, pp. 94-97.

²¹ Stepan used these criteria as the threshold for determining if the military held a high level of prerogatives within the first prerogative he defines on page 94 of Rethinking Military Politics (1988).

command of (the) military and (when) most local police chiefs are active duty military.”²²

In El Salvador, the Treasury Police and the Customs Police were under the control of the Salvadoran military in the early 1980's as part of the counterinsurgency efforts against the FMLN guerrillas. Guatemala's National Police was also under the control of the military during much of the war. While these situations may have been necessary during the civil wars these two countries faced, the transition to democracy required that the police forces be placed under civilian control and that the military's focus be redirected towards external threats to the nation's sovereignty.

In the third prerogative, the military's role in judicial affairs, both El Salvador and Guatemala's military forces had been granted extraordinary powers to decide when and if their soldiers would be tried for violations of the law during the conduct of the counterinsurgency efforts. Often allegations of human rights abuses were either covered up or blatantly ignored by military courts. Civilian courts had no jurisdiction over cases which involved military personnel. These facts contributed to the sense of impunity under which most of the military and police forces, who were engaged in counterinsurgency operations, operated in the prosecution of the war efforts. This lack of accountability within the law which occurred during the civil wars, if allowed to continue after the signing of the Peace Accords, will ultimately serve to undermine the basis of the peace processes and democratization efforts. This is made clear in the following quote from a recent article:

... accountability is an essential prerequisite for a successful democratic transition. *It is fundamental to any democratic system that all citizens are equal before the law, that they have the same access to justice and are equally accountable for their actions.* Thus, if past violations of human

²² Ibid, p. 96.

rights go unpunished, it will undermine the rule of law and the new democratic institutions which are being built.²³ (emphasis added)

It was widely known throughout the Salvadoran and Guatemalan militaries that most allegations of human rights abuses would never go to trial or be publicized because the higher ranking military officers would not allow charges to be filed because of the bad publicity which would result from a trial. This attitude within the Salvadoran military is demonstrated in the following quote:

On 23 March 1993, (Salvadoran Defense Minister) General Ponce accused the Truth Commission's report of trying to 'defile the honor and dignity of the armed forces and convince the public that the military had systematically violated human rights.'²⁴

It was clear during the peace processes in both countries, that impunity and corruption in both the civilian and military judicial systems had to be attacked in order to restore the public's confidence in the rule of law and democratic institutions. One of the first steps that could be taken in this area would be to allow the prosecution of military members in civilian courts for common crimes. This would significantly enhance the transparency of the military's actions to society, thereby reducing the aura of secrecy which surrounds military justice in El Salvador and Guatemala.

C. THE RULE OF LAW AND DEMOCRATIC CONSOLIDATION

As discussed earlier, in order for a democratic transition to be completed, many factors and variables must come together to allow for democratic consolidation to occur.

²³ Kaye (1997), p. 696.

²⁴ Ibid, pp. 705-6.

Juan Linz and Alfred Stepan define the five arenas which must exist in order for democratic consolidation to be successful. In their words "consolidated democracies need to have in place five interacting arenas to reinforce one another in order for such consolidation to exist."²⁵ They define the rule of law as one of these arenas. Indeed, the rule of law must exist for any government, not just a democracy, to survive. This necessity is based on the fact that citizens give up certain natural rights and responsibilities to the state in exchange for the state providing law and order for society. Francis Sejersted put it well in a recent book:

Democracy and rule of law can be seen as two different means to overcoming the inherent contradiction between state and society. State-building is necessary to society, but it also represents a threat. Rule of law was meant to curb state authority, while democracy was meant to mobilize society in the exercising of state authority... There was a need for peace, order and public security, and it went along with a general distrust of human nature.²⁶

Given the past authoritarian and repressive histories of El Salvador and Guatemala, the establishment of the rule of law as a necessary, but not sufficient, precondition for democratic consolidation is essential. Indeed, I believe that the establishment of the rule of law is the fundamental requirement, or test, which both countries must pass before democratic consolidation can occur.

D. ELEMENTS OF THE RULE OF LAW

Defining the elements of the rule of law which will be discussed in this thesis and addressing the reasons for choosing these particular areas is necessary before progressing any further. As mentioned before, four specific elements will be addressed. Each of

²⁵ Linz and Stepan (1996), p. 7.

²⁶ Sejersted (1988), pp. 132-3.

these areas was chosen by the author as particular areas of research for this thesis due to the prominence that each of these issues held in 1) the peace negotiations, which brought an end to the civil wars; 2) the written Peace Accords which were used to implement the peace agreements and which served as a basis from which democratic consolidation could progress; and 3) the democratization transitions, which are still underway in El Salvador and Guatemala.

The first and second areas of research, demilitarizing the police forces and redefining the role of the military in the state, have become intertwined by the history of the interaction between the police and military forces in both countries. It is essential for a democracy to have not only a well trained, professional, civilian police force which will focus on maintaining law and order in domestic society, but also, it must maintain a professional military force focused on external threats that does not *normally* become involved in domestic police and security roles.

The experiences of El Salvador and Guatemala in terms of the use of the military for internal security functions were not unique in Latin America. As Michael C. Desch elucidates in his chapter in the 1996 edited volume entitled Civil Military Relations and Democracy,²⁷ many Latin American government and military leaders in the 1960's began to view the threats posed by the socialist and communist forces in their countries as part of a world-wide communist movement which sought to foment revolutionary wars throughout the region. These local movements and revolutions were viewed as being a microcosm of the global confrontation between the West and the East in the Cold War.

²⁷ Diamond and Plattner (1996), pp. 12-29.

El Salvador and Guatemala, along with many other Latin American nations, especially the Southern Cone nations of Brazil, Argentina and Chile, began to develop strategies and doctrines that would allow the military and police forces to combat these new internal security threats. Desch has deftly summarized the national security thoughts of most of the Latin American militaries:

These doctrines continued to view international communism as the key threat... (and) saw the streets and plazas of their own countries and not the North German plain as the principal field of battle. According to this perspective, the threat posed by international communism emanated from domestic left-wing movements that would try to exploit social, economic, and political problems in their effort to undermine the state, the Catholic Church, and the military itself... To combat this threat, military officers could not rely solely on traditional weapons and tactics but would instead have to learn about political and psychological warfare, economic development strategies, social-welfare provision, and even national administration... The key point to be made here is that these cases provide (further) evidence of the link between internal, nontraditional military missions and poor civil-military relations.²⁸

As the threats from the communist movements in El Salvador and Guatemala began to grow through the 1960's, the military forces began to assume control of the civilian police forces in order to bolster their strength and capabilities to fight against the communists, represented not just by military combatants but also by civilian political leaders. The national and military intelligence apparatuses were also focused on gathering information on the perceived internal threats posed by the communist and left-wing political movements. Slowly, just like in many Latin American countries, the military began to dominate greater and greater portions, or prerogatives, of political life in both countries. Eliminating the military's role in politics is absolutely essential for

²⁸ Desch, Michael C.; "Threat Environments and Military Missions," in Diamond and Plattner's edited volume Civil Military Relations and Democracy (1996), p. 19.

democracy to be consolidated in El Salvador and Guatemala.

The third and fourth elements of the rule of law, judicial reform and human rights violations and impunity, are also intertwined. In order for there to be respect for the rule of law, the citizens of a country must have faith that their judicial and law enforcement system will function properly, in order to ensure the protection of their rights and freedom. When a country experiences a civil war, however, there tends to be a breakdown of this respect for the rule of law, because one part of the populace feels that it is so disenfranchised that it feels justified in breaking the law and taking up arms to oppose the legal authority of the state.

If, as in the case of El Salvador and Guatemala, there are widespread violations of human rights during the civil war and these abuses are covered up or not prosecuted, the loss of respect for the law will be more intensified. When police forces are used for counterinsurgency operations they begin to lose their sense of attachment to the populace. The police forces begin to rely much more on force than on peaceful means to solve problems. This shift in focus of effort results in a loss of trust between the citizens and the police forces. This lack of trust and respect causes misunderstandings and quite often leads to the police using more force than would normally be used in peacetime. Quite often this escalation in the use of force is unjustified and leads to human rights abuses. Many of these types of abuse, however, are excused by the military and the judicial system due to the state of war that exists, thereby leading to a greater loss of respect by the populace for the rule of law. This viewpoint is evidenced in the following quote by Desch:

Salvadoran Defense Minister, General Humberto Corado, continued to deny that the armed forces had done anything wrong: 'The armed forces have nothing to apologize for, since their conduct was consistent with the principles of a war in which a clandestine enemy attacks regular military patrols.'²⁹

Judicial corruption and incompetence, both before and during the civil war, have long been problems in El Salvador and Guatemala, and indeed throughout Latin America. Improving the performance of the judicial system in each of these countries was one of the main focuses of the discussions between the combatants during the peace negotiations. In El Salvador and Guatemala the executive branch of government had an unusually large amount of control over the judicial branch due to the fact that all judicial appointments were promulgated by the executive branch with little or no oversight from the legislatures. Also, both countries had used outdated and laborious written procedures as opposed to the oral procedures used in most judicial systems in the world today. In Guatemala the indigenous population, which constitutes a majority of the population, had for all intents and purposes been excluded from the judicial process due to the fact that judicial proceedings were only conducted in Spanish and translation services were not provided by the state. Also, public defenders were not provided by the state for those people who could not afford representation. So much of the population felt that redress through the court system was not available. The totality of these problems had to be addressed in the Peace Accords in order for there to be any hope of a successful transition to a consolidated democracy in either El Salvador or Guatemala.

²⁹ Ibid, pp. 705-706.

III. THE CASE OF EL SALVADOR

A. HISTORICAL BACKGROUND

El Salvador was one of the many battlefields of the Cold War. Leftist insurgents, the FMLN, were supported by their Communist allies in Nicaragua, Cuba and the Soviet Union. The government of El Salvador was, on the other hand, supported by the United States. While figures have not been officially published for the guerrilla side, between 1980 and 1992, the United States contributed \$4.5 billion, including \$1 billion of military aid, to the government of El Salvador.³⁰ The tiny country of El Salvador, with a land area of only 21,401 square miles (smaller than the state of Massachusetts), had become a microcosm of the global confrontation between East and West.

El Salvador had long been ruled by a military dictatorship which supported the dominance of the economic elite. Characterized by the brutal repression of leftist movements which was common throughout Latin America in the 1970's and 1980's, the government and military forces committed vast human rights abuses during this time period. During these two decades thousands of murders and disappearances were attributed to military, police and right-wing paramilitary organizations which were fighting a "dirty war", to coin the term used in Argentina, against leftist opponents to the government. The brutal tactics used during this phase of El Salvador's history carried over into the civil war which erupted in 1980 after two military coups in 1979.

Right wing opposition grew as a result of the political reforms brought about by the coups of 1979 and the appointment in 1980 of El Salvador's first civilian president in

³⁰ Schwarz (1991), p. 2.

over two decades, Jose Napoleon Duarte, who was appointed as the result of U.S. political pressure. This right wing opposition was personified by a new party which was founded in 1982 by Roberto D'Aubuisson Arrieta, a former army officer who had been linked to attempted coups, right-wing death squads, and the 1980 assassination of Archbishop Romero. D'Aubuisson's party was called the Nationalist Republican Alliance (ARENA). ARENA presented two faces to the world. The first was an image of "political moderation, support for free enterprise, (and) a desire to adjust but not completely repeal the previously enacted economic reforms"³¹ of 1980. This image was personified by the future President of El Salvador, Alfredo Cristiani. The second face of ARENA was personified by D'Aubuisson, and:

... aspired to restore - to the extent possible - the economic order and landownership pattern that had prevailed before the 1980 reforms. These hardline *areneros* also reportedly favored a concept of "total war" against the guerrillas. Also referred to as the "Guatemalan solution" after a violent style of counterinsurgency waged in that country in the mid-1980's, such an approach would inevitably entail sharply increased civilian casualties.³²

The main government force arrayed against the FMLN was the army. This force was in turn supplemented by the National Guard and the Treasury Police, both of which fell under army control during the war. Right-wing paramilitary forces were covertly supplied and ostensibly controlled by the government forces. The war which followed was one of extreme brutality on both sides, thereby severely complicating the road to peace in 1992.

³¹ Ibid, p. xxiii.

³² Ibid.

B. THE SALVADORAN PEACE PROCESS

Civil war raged in El Salvador from 1980 to 1992. Peace officially came to this small nation on January 16, 1992 in Chapultepec, Mexico when representatives of the government and of the FMLN signed the Peace Accords which brought an end to a twelve year civil war. After the deaths of over 72,000 people, both sides had come to accept that "in twelve years, neither party managed to defeat its opponent militarily on the battlefield"³³ and that the time for peace had come. Also, the sources of support for both sides in the conflict had begun to dry up as a result of the end of the Cold War. In addition, the United States had put the government of El Salvador on notice that it could no longer expect virtually unlimited aid, particularly after a few high profile murders and disappearances committed by right-wing paramilitary squads in the late 1980's. The most heinous of these was the massacre of six Jesuit priests and two women in November 1989. Similarly, the FMLN was concerned about its sources of external support, particularly after the electoral defeat of the Sandinistas in Nicaragua in 1990.

Serious peace talks began between the two sides in 1989. And the 1992 Peace Accords, which were brokered by the United Nations, represented the culmination of over two years of discussions between the combatants. Despite the realization, on both sides of the table, that the war could not continue, there were frequent breakdowns in negotiations. Ricardo Cordova Macías, in his 1996 work on El Salvador, argues that eventually "a national consensus for peace gradually emerged as the negotiations moved

³³ Macias (1996), p. 26.

forward, which served as a pressure mechanism on the negotiators to bring about the signing (of the Accords).³⁴ To put it bluntly, the Salvadoran people were tired of war.

Chapultepec marked the starting point of “three transitions (which) are simultaneously taking place in El Salvador: the transitions from war to peace, militarism to demilitarization, and authoritarianism to democracy.”³⁵ An inherent component of each of these transitions was the evolution from a country that had been ruled by an authoritarian regime that used terror tactics to repress any opposition to their rule, to a country governed by the rule of law. The civil war had caused a wholesale breakdown in the institutions of law in the country. Military, National Guard and Treasury Police personnel acted with impunity in the prosecution of the war, committing atrocious human rights violations during the conduct of the war with little fear of prosecution. The court system was heavily influenced by the executive branch of government and was woefully underfunded and understaffed. Right-wing paramilitary organizations were tacitly supported by the government and the army and were utilized in the overall government strategy to defeat the guerrillas.

All of these issues needed to be addressed, and to a certain extent all were addressed in the Peace Accords, in order to ensure that El Salvador once again became a country which was governed under the rule of law. The United Nations played a large role in the peace process, not only serving as arbiter of the negotiations but also as the guarantor of the implementation of the Accords. This chapter will analyze the sections of the Peace Accords which were designed to re-establish a system of justice and ensure

³⁴ Ibid, p. 26.

³⁵ Ibid, p. 27.

the rule of law in El Salvador and will discuss how the implementation of the Accords has progressed since 1992.

C. ELEMENTS OF THE RULE OF LAW IN EL SALVADOR

Numerous issues were discussed during the negotiations which led to reconciliation and peace in El Salvador. Chief among the concerns of the FMLN, and most of the Salvadoran citizenry, were those which dealt with the re-establishment of the rule of law in the state. The discussion of these issues focused around the demilitarization of society, judicial and police reforms, the reduction of the size of the armed forces and a redefinition of their role in society. Another pressing concern was the issue of the human rights abuses which had been committed during the war. A full accounting of the atrocities had to be published in order to cleanse society of the damage which had been done during the war.

1. Redefining the role of the armed forces of El Salvador

Chapter 1 of the Peace Accords deals with the Armed Forces. Section 1 is entitled "Doctrinal Principles of the Armed Forces" and calls for a redefinition of the role of the armed forces in society. (All citations from the Peace Accords are taken directly from The United Nations and El Salvador 1990-1995; Document 36, pp. 193-230.) Section 1 states that:

- the mission of the armed forces is to defend the sovereignty of the State and the integrity of its territory.
- The armed forces are a permanent institution in the service of the nation. They shall be obedient, professional, apolitical and non-deliberative.
- As a state institution, the armed forces play an instrumental, non-decision-making role in the political field.
- The doctrine of the armed forces is based on a distinction between the concepts of security and defense. National defense, the responsibility of the armed forces, is intended to safeguard sovereignty and territorial

integrity against outside military threat. Security, even when it includes this notion, is a broader concept based on the unrestricted respect for the individual and social rights of the person. It includes, in addition to national defense, economic, political and social aspects which go beyond the constitutional sphere of competence of the armed forces and are the responsibility of other sectors of society and of the State.

- The maintenance of internal peace, tranquillity, order and public security lies outside the normal functions of the armed forces as an institution responsible for national defense.

These strict definitions of the role the armed forces were to play in society were made necessary by the role the military had played previously. The Salvadoran military had seen its role as protector of the state and as guarantor of the security of the state. In the past, the security of the state had been defined as ensuring the continuity of power of the economic elites. The armed forces were used to ensure not only the external security of the state, but also domestic tranquillity, according to John Lovell and David Albright:

One consequence of the military's prolonged political domination has been the perception that it is the only institution in society capable of defending the state and guaranteeing order... Not surprisingly, a constant feature of the Salvadoran military is its unwillingness to subject itself to civilian control... the peace accords represent an attempt to change civil-military relations dramatically and move toward a relationship of civilian supremacy...³⁶

While military involvement in the internal security role has significantly diminished, some vestiges of the old regime still remain. Lovell and Albright argue that:

... high ranking officers continued to view the military as the only social institution that cherishes the nation's basic interests at heart. Colonel Jose Humberto Corado Figueroa, Chief of Operations from the High Command (stated) that the armed forces have always defended the constitutional order and should never allow themselves to be subordinated to the 'designs of our enemies'... General Mauricio Vargas, Deputy Chief of Staff, stated that the military continues to be 'the nation's pillar of support, sustaining institutions'³⁷

³⁶ Lovell and Albright (1997), p. 41.

³⁷ Ibid, p. 72.

Despite these statements, there have been few instances of the military attempting to re-assert itself as a political actor inside the state since 1992. In fact, the military has been dramatically reduced in accordance with the Peace Accords. Section 4 of the Accords stated that "the new situation of peace shall include the reduction of the armed forces to a size appropriate to their doctrine and to the functions assigned to them by the Constitution..." The armed forces have been reduced from a wartime high of 62,000 troops to approximately 18,000.³⁸ Also, the National Guard and Treasury Police, which were under military control during the civil war have been disbanded. In December 1994 the Government demobilized the National Police, which had been dominated by the military.³⁹

2. Demilitarization of the Salvadoran police forces

Provisions for the establishment of a new civilian police force whose mission was to maintain internal security and public order were made in the Peace Accords. In order to emphasize the decreased responsibilities of the armed forces, the first mention of the role of the new police forces was made in Chapter 1 of the Peace Accords, the section which dealt primarily with the roles of the armed forces. Chapter 1, Section 6 is entitled "Public Security Forces" and states:

... the safeguarding of peace, tranquillity, order and public security in both urban and rural areas shall be the responsibility of the National Civilian Police (PNC), which shall be under the control of civilian authorities. The PNC and the armed forces shall be independent and shall be placed under the authority of different ministries... the PNC shall be a new force, with a new organization, new officers, new education and training mechanisms and a new doctrine. The National Guard and the

³⁸ US Department of State Report on El Salvador Human Rights Practices (1995), p. 1.

³⁹ Ibid.

Treasury Police shall be abolished as public security forces and their members shall be incorporated into the army.

Chapter II of the Peace Accords is entitled "National Civilian Police." Section 1

states:

- ... the PNC shall be the only armed police body with national jurisdiction. Its mission shall be to protect and safeguard the free exercise of the rights and freedoms of individuals, to prevent and combat all types of crimes, and to maintain internal peace, tranquillity, order and public security...
- the PNC shall (be in) accord with democratic principles; the concept of public security is a service provided by the State to its citizens, free from all considerations of politics, ideology or social position or any other discrimination; respect for human rights...
- No member of the PNC may inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment, nor invoke the orders of a superior or special circumstances, such as a state of war or threat of war, threats to national security, internal political instability or any other public emergency to justify torture or other cruel, inhuman or degrading treatment or punishment
- All orders from above shall be in keeping with the laws of the Republic. Obeying the orders of a superior is no justification for committing acts which are clearly punishable.
- Special emphasis shall be placed on the training of police personnel, so that they are given the best possible preparation and are trained to perform their duties in strict conformity with the doctrine of the police forces, with special emphasis on unrestricted respect for human rights.

Despite these provisions, some instances of the armed forces being used in the internal security role have been reported, as noted by the U.S. Department of State:

Although the military is no longer responsible for public security, the President ordered the ESAF (El Salvador Armed Forces) to conduct joint patrols with the PNC in rural areas in response to concerns about rising crime. In practice, the military protects PNC officers in the execution of their duties.⁴⁰

This type of mutual support has been defended by the government of El Salvador because of the lack of proper weapons and equipment in the PNC. The training of the

⁴⁰ Ibid.

PNC is conducted at the National Public Security Academy (ANSP), a civilian institution which has received much organizational, educational and financial assistance from various international organizations.

The United States Department of Justice has provided significant assistance to the ANSP through the International Criminal Investigative Training Assistance Program (ICITAP). Over 20,000 police officers have been trained at the ANSP and, as of March 1996, over half of these forces have been deployed to their areas of responsibility.⁴¹ The training these forces have received in the area of human rights appears to be paying off, but there are lingering problems. According to U.S. Department of State's 1996 annual report on El Salvador Human Rights Practices, "There have been no confirmed cases of political killings. However, there were two cases in which the authorities charged PNC officers with extrajudicial killing. Six PNC agents and two PNC drivers face charges of killing four persons... in March 1996."⁴² In addition, the report states that:

- ...complaints against the PNC for excessive use of force and denial of due process continued. Some of these complaints were investigated and found to be warranted, but most were not thoroughly explored due to institutional weaknesses of the PPDH (Office of the Counsel for the Defense of Human Rights) and the PNC Inspector General's office.
- The PNC continued to be the subject of more complaints of human rights violations than any other government institution. This reflects their license to use force and carry out arrests, as well as their inexperience... The majority of the complaints against the PNC continued to be for denial of due process. The authorities have investigated and disciplined some PNC agents for misconduct, including human rights violations, and jailed a few for criminal activity.
- Despite the volume of human rights complaints, public opinion polls gave the PNC relatively high marks amidst general dissatisfaction with government institutions as a whole. In an August poll... the PNC came in second place in a ranking of those institutions best defended human rights.

⁴¹ Ibid.

⁴² US Department of State report on El Salvador Human Rights Practices (1996), p. 2.

A plurality of respondents, however, stated that no institutions effectively defended human rights...⁴³

It appears that El Salvador is on its way towards obtaining a competent and professional police force, but the problems of crime and violence continue. An effective force is sorely needed in the country which has one of the highest violent crime rates in the world. According to the Economist, El Salvador is now believed to be the world's most violent country, with a murder rate of 140 per 100,000.⁴⁴ El Salvador's current President, Calderon Sol, recognizes that rampant crime poses a severe threat to the confidence the Salvadoran citizenry has in his government's ability to ensure the rule of law prevails. In a recent interview, President Calderon Sol acknowledged the fact that crime is a tremendous problem in society but he also stated that the government is taking effective action to combat this problem:

We (the government) are extremely concerned over crime, which represents a constant scourge to Salvadoran society. We have been fighting against crime successfully... We expect to increase the number of PNC cadres. Currently there are more than 14,000 agents. We must continue increasing the number of agents... that are necessary for the country's public security.⁴⁵

This statement from President Sol helps to identify one of the main questions which must be answered by the Salvadoran government. How many police are enough, and when does the problem become more a question of training rather than sheer numbers? Also, when will the public or other members of the government no longer accept excuses and promises and ask the military to step in and restore internal order?

⁴³ Ibid, pp 3-4.

⁴⁴ Economist (1997), p. 44.

⁴⁵ FBIS-LAT-97-092, 12 May 1997.

3. Judicial reform in El Salvador

The need for reforms in the Salvadoran judicial system was addressed in an April 1991 agreement, which later became part of the official Peace Accords. This agreement, which also addressed electoral reforms, had a number of provisions which were designed to improve the judicial system and the judicial process in El Salvador. The first provision required that the government create a more professional and nonpolitical Judicial Training School for judges and prosecutors. Other changes included the "election of Supreme Court justices by a two-thirds majority of the Legislative Assembly, (and) commitment of 6 percent of the national budget to strengthen the ill-equipped judicial system..."⁴⁶

Judicial corruption and incompetence had been accepted as a matter of fact by most Salvadorans, especially during the conduct of the civil war. Judicial complicity in the concealment and cover up of the human rights violations during the war allowed the feeling of impunity to manifest itself in police and military behavior during the war. In fact, the Truth Commission went much farther than the Peace Accords in condemning the actions of the judicial branch during the war. This can be seen in the following quote by Mike Kaye:

The Truth Commission's report criticizes not only the military... but also those who allowed abuses to take place or covered them up, such as members of the judiciary... In the area of Judicial reform, the Truth Commission recommended that the Supreme Court of Justice magistrates should resign and a new Court should be elected; that all judges found to be inefficient or corrupt should be removed from their posts; and that ... the professionalism of the School for Judicial Training should be improved.⁴⁷

⁴⁶ Blandon (1995), p. 41.

⁴⁷ Kaye (1997), p. 709.

On July 1, 1993 the officials mentioned in the report of the Commission on the Truth were removed from office, including all members of the Supreme Court of Justices.⁴⁸ A new National Council of the Judiciary was formed which was made up of members of Salvadoran bar associations and other legal professionals. This organization was charged with making recommendations to the legislature of candidates for positions on the Supreme Court. The National Council was to "assume the task of naming judges to the lower courts, previously a function of the Supreme Court."⁴⁹

Replacement members of the Judicial Supreme Court, half of whom had been nominated by the National Council of the Judiciary, were elected by the newly elected Legislative Assembly in June 1994. Despite the fact that ARENA held a majority in the new Congress (39) as compared to the newly legitimized FMLN (21), both parties were forced to form coalitions with other minor parties in order to ensure that the new members of the Supreme Court were acceptable to both sides of the aisle. ARENA and the PCN, the rightist parties, aligned against a coalition of left wing parties. Stahler-Sholk notes that:

Because a two-thirds vote is required to elect the magistrados, an impasse occurred... until both sides managed to reach an agreement on the principal issue of discord, the new president of the court... for the first time in the political history of El Salvador, the court was formed based not on the suggestions of the executive but rather on debate in the Assembly and on the proposals in which the association of lawyers and the National Council of the Judiciary (ie. civil society) played an important role. The court's composition is also balanced. This court has a predisposition to take on its properly independent role...⁵⁰

⁴⁸ Dominguez and Lowenthal (1996), p. 34.

⁴⁹ Stahler-Sholk (1994), p. 17.

⁵⁰ Ibid, p. 44.

It appears that a system of checks and balances has been developed with regard to the relationships between the three branches of El Salvador's government. In the past the executive branch had most of the power to determine the makeup of the Supreme Court and other judicial branch positions. Due to the dominance of the rightist parties throughout the 1980's, most notably ARENA's ascendancy to power in the legislative and executive branches, the courts consisted mostly of supporters of right-wing policies and viewpoints.

Even if the Legislative Assembly had not been dominated by ARENA, it did not have the power to nominate judges or other judicial officials. Instead, the legislature only had the power to vote on whether the executive branch nominees would be accepted for office. Now both civil society, represented by the National Council of the Judiciary and some of the professional associations of lawyers, and political society, represented by lawmakers from all sides of the political spectrum in the Legislative Assembly, have a voice in deciding which judges are acceptable to the general populace rather than those which are acceptable only to the ruling party.

4. Human rights and impunity in El Salvador

As in most of the states in the world which were also going through the transition from authoritarianism to democracy, the issue of human rights abuses by both sides in the war and an accounting for these crimes was perhaps the most contentious issue in the peace negotiations. It was recognized, however, by both sides, that this accounting had to take place. Both the FMLN and the Cristiani government understood that:

Democratic structures require governance under the rule of law which... incorporates basic norms of human rights and civil rights. The rule *of* law - not simply rule *by* law - ensures a system governed by openness, security

and accountability such that citizens may enjoy trust in their institutions and among each other.⁵¹ (emphasis added)

On July 26, 1990 in San Jose, Costa Rica, both sides in the conflict agreed to “unrestricted respect for international human rights laws and standards”⁵² and to allow the United Nations to establish a body to monitor compliance and to “receive communications from any individual, group of individuals or body in El Salvador containing reports of human rights violations.”⁵³ With this agreement, the so called San Jose Agreement on Human Rights, the United Nations Observer Mission in El Salvador (ONUSAL) was formed. This was a precedent-setting mission for the United Nations. “ONUSAL... arrived in El Salvador to undertake a pioneering role - international verification within a sovereign United Nations Member State, prior to a cease-fire agreement.”⁵⁴ This organization would later assume monitoring and assessment missions in many different areas of the peace process. ONUSAL would also serve as the main pressure mechanism used by the international community to force both sides in the conflict to reach agreements and compromises after the Peace Accords were signed in 1992.

In accordance with an agreement reached in Mexico City on April 27, 1991, the Secretary-General of the United Nations appointed a Commission on the Truth which was “entrusted with the task of investigating serious acts of violence that have occurred since 1980 and whose impact on society urgently requires that the public should know the

⁵¹ Kritz (1995), p. xv.

⁵² United Nations (1995), p. 13.

⁵³ Ibid.

⁵⁴ Ibid, p. 17.

truth... and to assist the transition to national reconciliation.”⁵⁵ The Commission consisted of three individuals who were appointed by the Secretary General of the United Nations. They were Belisario Betancur, former President of Colombia; Reinaldo Figueredo Planchard, former Foreign Minister of Venezuela; and Professor Thomas Bergenthal, former President of the Inter-American Court for Human Rights and President of the Inter-American Institute for Human Rights.⁵⁶ On July 13, 1992, the Commission on the Truth was formally installed and the members arrived in El Salvador on July 14. The mandate of the commission was as follows:

The commission was not established as a legal entity. The Peace Accords gave the commission six months to carry out four principal tasks: to clarify the human rights abuses during the war; to study very carefully the impunity under which the security corps and the Salvadoran military committed such abuses; to offer legal, political, or administrative recommendations to avoid the recurrence of this history of abuses; and, finally, to encourage national reconciliation. Both guerrillas as well as the government agreed to carry out the recommendations of the commission.⁵⁷

The Report on the Findings of the Truth Commission, which was released on March 15, 1993, provoked much dissatisfaction throughout Salvadoran society. The Truth Commission had received over 22,000 depositions concerning human rights violations which dealt mainly with extra-judicial killings, disappearances and torture during the course of the war. As Mike Kaye notes in a 1997 article: “approximately 85% of these were attributed to the armed and security forces... Only 5% of denunciations were made against the FMLN.”⁵⁸ According to Ricardo Cordova Macías in “El Salvador:

⁵⁵ Ibid, p. 168.

⁵⁶ Ibid, p. 69.

⁵⁷ Macias (1996), p. 31.

⁵⁸ Kaye (1997), p. 700.

Transition from Civil War” the six main recommendations of the Truth Commission for improvements in the area of transitional justice and the establishment of the rule of law were as follows:

1. ...those responsible for serious human rights abuses who hold any public or military office today be removed immediately and barred from exercising public office in El Salvador for at least ten years. The commission recommended that forty military personnel be removed from the armed forces including the minister and vice-minister of the armed forces, along with various FMLN members, including two commanders, be barred from public service for 10 years.
2. The Commission called for the FMLN renounce forever all forms of violence in the pursuit of political goals.
3. The Commission was of the opinion that the vast majority of abuses studied... were committed by members of the armed forces or groups allied with them... (the Commission recommended) the removal of all military officers implicated in human rights violations or other serious violations... (recognized) the need to establish a new legal mechanism that would permit military personnel to refuse to carry out an order that might result in a crime or violation of human rights... (and) the taking of steps to cut all ties between the military and the private and/or paramilitary armed groups.
4. The commission also issued a special call to carry out a specific (public) investigation of the death squads... denouncing them publicly.
5. The commission found the system of justice to be very inefficient and proposed several recommendations: the resignation of all members of the Supreme Court... a real separation of powers among the executive, legislative and judicial branches, thereby depoliticizing the court... and that the power at the pinnacle of the Supreme Court, as well as its centralized power over the rest of the judicial system, be reduced.
6. The commission considered that justice requires sanctions against human rights violations, but the purpose of the commission was not to specify sanctions, and it recognizes that the current Salvadoran justice system is not capable of objectively passing judgment and carrying out such sanctions. Therefore, the commission finds itself unable to recommend judicial procedures in El Salvador... until judicial reforms are carried out.⁵⁹

Despite the agreement by both sides in the conflict before the Commission began its mission to accept and implement the findings of the Commission, both sides were

⁵⁹ Ibid, pp. 32-33.

slow to embrace and implement the recommendations. As noted in the next quote by Ricardo Macías, the Salvadoran Supreme Court rejected the findings and recommendations of the Commission and refused to step down:

The Supreme Court energetically rejected the report and the recommendations... In the opinion of the court's magistrates, the Truth Commission was created by political agreement... between two parties expressly defined and with an especially determined purpose, from which no effect can be derived that might subvert the order established by the constitution...⁶⁰

President Cristiani and the Legislative Assembly, which was dominated by ARENA and other right wing parties, acted quickly to implement an amnesty law which would circumvent the recommendations of the report of the Commission on the Truth. A sweeping amnesty law was passed by the Legislative Assembly five days after the report was issued.⁶¹ Roht-Arriaza notes that:

Decree 486 granted unconditional amnesty for political crimes, common crimes connected to political crimes, and common crimes... In addition to the crimes usually considered to be political, the law included a series of crimes against the justice system, such as judicial resolutions that knowingly disregard the law or the facts... This... reflects the Truth Commission's emphasis on the *judiciary's complicity in the massive human rights violations* that occurred during the war. The amnesty law provided for the extinction of civil as well as criminal responsibility...⁶² (emphasis added)

Politically, the issue of transitional justice is perhaps the single most dangerous obstacle to be overcome by a fledgling democracy. In the case of El Salvador, the vehement opposition to the recommendations contained in the Truth Commission's report by the military, the judiciary, and members of the political far right, forced the

⁶⁰ Ibid, p. 33.

⁶¹ Roht-Arriaza (1995), p. 211.

⁶² Ibid.

government to seek a position acceptable to most Salvadorans, even if not ideal. Despite the acceptance of the Truth Commission's report, many Salvadorans still did not accept the fact that *justice* had been served, as evidenced by Roht-Arriaza, who states that: "The amnesty has effectively blunted the Truth Commission's role, turning its findings into a substitute for judicial action. This leaves El Salvador with some measure of truth and reinforcement of the notion that justice is not yet possible."⁶³

D. CONCLUSION

El Salvador has made significant progress, since the signing of the Peace Accords in 1992, in establishing the rule of law and in consolidating its to democracy. The military has been brought under civilian control and it has been removed from the historically dominant position it had held in the political sphere. Also, the primary mission of the ESAF (Armed Forces of El Salvador) has been focused on the defense of Salvadoran territory from external threats. The police have been removed from the control of the military and have been placed under the command of the Minister of the Interior, a civilian. Judicial reform has progressed most notably in the area of military justice. Members of the armed forces may now be tried in civilian courts for common crimes, rather than being tried in secrecy in military courts for all offenses. The issue of human rights and impunity was addressed by the Truth Commission. All members of the armed forces, and certain civilians, who were implicated in human rights violations during the war, were removed from office as a result of the Truth Commission report.

Despite all of the progress, there is still cause for concern for the future of democracy in El Salvador. The high crime rate, and the seeming inability of the

⁶³ Ibid, p. 213.

government and police to control it, will continue to provide a source of discontent within the populace. If this situation continues, it may force a call from either the government or the common citizens for the military to step in and solve this problem. It is already disturbing that the President has authorized the use of military personnel to augment the civilian police forces in certain areas. The inability of the civilian government and police forces to provide for law and order within their territory could ultimately lead to a breakdown of the consolidation of democracy.

IV. THE CASE OF GUATEMALA

A. HISTORICAL BACKGROUND

After more than three decades in power, the Guatemalan military sought to disengage from politics in order to devote its complete attention to the war against the URNG in the countryside. In the spring of 1985, Vinicio Cerezo Arevalo, a civilian Christian Democrat, was elected President of Guatemala in relatively free and fair elections. This seminal event "brought to a halt the thirty-two-year tradition of military governments in Guatemala, which had begun violently in 1954."⁶⁴

The Guatemalan military establishment, during these thirty two years, had succumbed to the "New Professionalism"⁶⁵ which had infected many Latin American militaries in the 1960's and 1970's. This new doctrine saw the military as both the government of the state, and as an institution within the state, which adopted new roles within society. Instead of focusing solely on providing security from external threats to the state, the military had also assumed responsibility for the internal security of the state.⁶⁶

The presidential elections in 1985, and the Congressional elections which had preceded them in 1984, were made possible by the Guatemalan military's decision to allow the election of a civilian government. This opening was precipitated by many factors. First, Guatemala had been labeled an international pariah due to the brutal way it

⁶⁴ Dominguez and Lowenthal (1996), p. 50.

⁶⁵ Stepan (1973), p. 52.

⁶⁶ Stepan (1988), Table 2.1, p. 15.

conducted the counterinsurgency against the URNG. In order to overcome this image and to become eligible for foreign aid to help rebuild the economy, the military realized that an elected, civilian President would offer more legitimacy to the government in the international arena. Also, the military hoped that by allowing elections they would mollify some of the domestic critics of the government, and thereby begin to limit the amount of social protest inside the state. By allowing the elections to take place and by voluntarily handing power over to an elected civilian, the military was able to control the pace of events and to insure against a sudden loss of power within the government. This type of transition, which has been coined a “transaction” by Felipe Aguero, allowed the Guatemalan military to “command high levels of influence over the transition.”⁶⁷

While this government transition was taking place, the Guatemalan military was still deeply entrenched in a brutal civil war with a leftist guerrilla force called the Guatemalan National Revolutionary Union (URNG). The URNG, which was comprised chiefly of members of the minority, indigenous Maya Indian population, were being supplied by the Cubans and Nicaraguans. Guatemala had been embroiled in this conflict for over thirty-five years, which had been characterized by brutal combat and atrocious human rights violations by the combatants. Government forces, both the military and civil defense units, known as Voluntary Civil Defense Committees (CVDCs), committed most of the human rights violations. In fact, during the early 1980’s “over 200 Mayan Indian villages were obliterated, tens of thousands of people were killed, and thousands

⁶⁷ Aguero (1995), p. 146.

were victims of forced disappearance.”⁶⁸ It was in the face of this history that the new civilian government of President Cerezo began peace talks with the URNG.

An inherent goal of the peace process was to return Guatemala from a country that had been ruled through a repressive regime that used terror tactics to repress any opposition to their rule, to a country which is governed by the rule of law. The civil war had caused a wholesale breakdown in the institutions of law in the country. Military and police personnel had acted with impunity in the prosecution of the war, committing atrocious human rights violations during the conduct of the war with little fear of prosecution. The court system was heavily influenced by the executive branch of government and was woefully underfunded and staffed. Paramilitary organizations, in the form of the Civilian Village Defense Councils (CVDCs) were tacitly supported by the government and the army and were utilized in the overall government strategy to defeat the guerrillas. All of these issues were addressed in the Peace Accords, in order to ensure that Guatemala once again became a country which was governed under the rule of law. The United Nations played a large role in the peace process, not only serving as arbiter of the negotiations but also as the guarantor of the implementation of the Accords.

B. THE GUATEMALAN PEACE PROCESS

The peace talks, which began in 1986 with President Cerezo's election, were plagued by breakdowns and delays, and dragged on for over ten years. After many years of fruitless negotiations, a request was made by both of the combatants in late 1993 for the United Nations to begin arbitration of the discussions. The United Nations agreed to provide this service and a decision was made by Boutros-Boutros Ghali, the UN Secretary

⁶⁸ Roht-Arriaza, (1995), p. 155.

General, to convene a meeting with the purpose of establishing terms for the continuation of the talks.⁶⁹ This meeting took place in Mexico City from the 6th to the 9th of January in 1994. The first significant agreement between the combatants, entitled the Framework Agreement for the Resumption of the Negotiating Process between the Government of Guatemala and the “Unidad Revolucionaria Nacional Guatemalteca” (URNG) was signed on January 10, 1994, as a result of this meeting.⁷⁰ Both sides, as noted below, were optimistic that an end to civil war could be negotiated before the end of 1994.

- Time-frame: the parties express their commitment to arrive at a firm and lasting peace agreement within the shortest possible time during 1994. In this context, they undertake to demonstrate the necessary flexibility for successful negotiation of the general agenda.
- In the context of their efforts to facilitate the negotiating process, the parties have recognized the desirability of resorting to all measures that will be conducive to rapprochements and agreements between them...⁷¹

Unfortunately for the Guatemalan people, rather than concluding the war by the end of 1994, the peace process took close to three more years to complete.

During the ensuing negotiations the Comprehensive Agreement on Human Rights and the Agreement on a Timetable for Negotiations of a Firm and Lasting Peace in Guatemala were signed in Mexico City on March 29, 1994. As part of the Human Rights Agreement, the signatories requested that a United Nations body be formed to begin the process of investigation of human rights violations and to serve as the verification authority for this agreement.

In the Comprehensive Agreement on Human Rights, the parties reiterated their decision in the Framework Agreement to request the United Nations to verify the implementation of all agreements reached between them. In

⁶⁹ MINUGUA Internet Homepage, <http://www.un.org/Depts/minugua/paz2.html>

⁷⁰ Ibid, <http://www.un.org/Depts/minugua/paz.html>

⁷¹ Framework Agreement for the Resumption of the Negotiating Process between the Government of Guatemala and the “Unidad Revolucionaria Nacional Guatemalteca” (URNG), (1994): Section V.

this context, the parties are now requesting that the United Nations establish, at the earliest opportunity, a mission to verify implementation of the human rights agreement...⁷²

With this request the United Nations Security Council adopted a resolution on September 28, 1994 to “establish a Mission for the Verification of Human Rights and of Compliance with the Commitments of the Comprehensive Agreement on Human Rights in Guatemala”⁷³ which has come to be referred to by its Spanish acronym, MINUGUA. “On November 21, 1994... the Mission (MINUGUA) formally opened its doors to the Guatemalan public.”⁷⁴ After the signing of ten more agreements between the two sides, the civil war officially ended on December 29, 1996 in Guatemala City with the signing of the Agreement on a Firm and Lasting Peace. In conjunction with the signing of each of these agreements, MINUGUA’s role had been expanded from not only the verification of the Human Rights agreement but also to the verification of most of the provisions of the other agreements signed by the Government of Guatemala and the URNG. Just like in the El Salvador Peace Process, the United Nations had become the chief verification and implementation authority for the Guatemalan Peace Process.

C. ELEMENTS OF THE RULE OF LAW IN GUATEMALA

As mentioned previously, there were four specific areas which had to be addressed in the Peace Process in order to ensure that Guatemala was returned to a

⁷² Letter dated April 9, 1994 from the Secretary General of the United Nations to the President of the UN General Assembly and the President of the UN Security Council. MINUGUA Internet Homepage, <http://www.un.org/Depts/minugua/paz3.html>

⁷³ United Nations Resolution 48/267 of September 19, 1994. MINUGUA has an internet homepage which contains many sources of information on the Guatemalan peace process. Perhaps the most useful source is a complete copy of each of the agreements which make up the overall Peace Accords. MINUGUA’s homepage can be found at: <http://www.un.org/Depts/minugua/mandato.html>

⁷⁴ MINUGUA’s First Report: MINUGUA Internet Homepage: <http://www.un.org/Depts/minugua.html>

country which was governed by the rule of law. These four areas were the redefinition of the role of the armed forces in the state, the demilitarization of the police forces, judicial reform, and how Guatemala was to address the issue of human rights violations which occurred during the war with particular emphasis on the issue of impunity.

1. Redefining the role of the armed forces of Guatemala

The last area addressed by Agreement on the Strengthening of Civilian Power and on the Role of the Armed Forces in a Democratic Society is redefinition of the role the armed forces will play within the state. In accordance with this agreement, the Government agreed to sponsor the following amendments to the Guatemalan Constitution:

Article 244 - The Guatemalan armed forces are a permanent institution in the service of the nation. They are unique and indivisible, essentially professional, apolitical, loyal and non-deliberative. *Their function is to protect the sovereignty of the State and its territorial integrity...* (emphasis added)

Article 246 - Duties and powers of the President over the armed forces. Replace the first paragraph by the following "The President of the Republic is the Commander-in-Chief of the armed forces and shall issue his orders through the Minister of Defense, whether he is a civilian or a member of the military."⁷⁵

With the addition of two more lines to the Constitution the mission of the armed forces has been severely restricted to that of providing for the external security of the State and the President has been re-defined as the Commander-in-Chief of the armed forces instead of the Minister of Defense. Theoretically, these two additions should push Guatemala farther into the circle of "democratic" nations by guaranteeing civilian control

⁷⁵ Agreement on the Strengthening of Civilian Power and on the Role of the Armed Forces in a Democratic Society signed 19 September, 1996; Paragraph 36.

of the military and by ensuring that the military does not have a defined role as one of the guarantors of internal security in the state.

Additionally, many of the military's additional prerogatives have been significantly reduced as a result of this agreement. This is demonstrated in the following sections of the Accords:

38. A new military doctrine shall be formulated in accordance with the reforms envisaged in this Agreement. The doctrine shall encompass respect for the Guatemalan Constitution, human rights... protection of national sovereignty and independence... and the spirit of the agreements on a firm and lasting peace.

39. The size and resources of the Guatemalan armed forces shall be sufficient to enable them to discharge their function of defending Guatemala's sovereignty and territorial integrity, and shall be commensurate with the country's economic capabilities.

40. The public educational, financial, health, commercial, assistance and insurance institutions, installations and offices corresponding to the needs and functions of Guatemalan armed forces shall operate under the same conditions as similar not-for-profit institutions.

62. The Parties agree that the mobile military police shall be disbanded within one year from the signing of the agreement on a firm and lasting peace...

63. ... (b) Reducing the size of the armed forces of Guatemala by 33 percent in 1997, relative to its current size and organization.

(c) Redirecting and reallocating its budget to the constitutional functions and military doctrine referred to in this Agreement, making maximum use of available resources to achieve, by 1999, a 33 percent reduction in military spending as a proportion of GDP, as compared to 1995. This will free resources from the Government's general budget to be applied to programs in education, health and public safety.

Some backpedaling on these issues appears to be taking place within the armed forces and it will be interesting to see how these areas of contention are resolved. In a May 3, 1997 report about the completion of the URNG demobilization, Guatemalan Defense Minister General Julio Balconi announced "that the army's force reduction will be based on its allowable size of 50,000 troops, and not its actual size of 38,500. This

distinction will require the army to demobilize only about 5,000 active troops, among them 120 officers, while claiming to have eliminated 16,500 'positions.'"⁷⁶ This position may indicate a few things, that the military and government of Guatemala may have engaged in intentional deception by not divulging the actual numbers of personnel to be cut at the Peace Accords. Or, it may be evidence of a military scheme to retain more personnel than the government had originally planned and agreed to maintain in the Peace Accords. The answer to this question may only become apparent as the actual reductions in the military are made in the future.

2. Demilitarization of the Guatemalan police forces

The demilitarization and reorganization of the police force was also covered in this Agreement. In a move which was similar to the path chosen by El Salvador, the Guatemalans decided to create a new National Civil Police (PNC) force and to disband the other police forces which had been in existence during the civil war. This new force would be entirely separate from the military and would be the only force charged with the role of providing internal security. Relevant portions of the Peace Accords which deal with this issue are quoted below:

22. Accordingly, the restructuring of the country's existing police forces into a single National Civil Police, which would be responsible for public order and internal security, is necessary and cannot be delayed. This new police force should be professional and under the authority of the Ministry of the Interior.

23. The reform of the Constitution shall establish the functions and main characteristics of the police force as follows: "The National Civil Police shall be a professional and hierarchical institution. It shall be the only armed police force competent at the national level whose function is to protect and guarantee the exercise of the rights and freedoms of the individual; prevent, investigate and combat crime; and maintain public

⁷⁶ Tuckmann, Johanna; AP report from The Washington Post; "Guatemalan Guerrillas Demobilized." Online. Central America Update, May 3, 1997. Available at: <http://www.us.net/cip/970516.html>

order and internal security. It shall be under the direction of the civil authorities and shall maintain absolute respect for human rights in carrying out its functions...

27. (a) All members of the new police force shall receive training at the Police Academy, where they will be given extensive professional preparation and imbued with a culture of peace, respect for human rights and democracy, and compliance with the law...

30. (a) By late 1999, a new National Civil Police force, comprised of at least 20,000 members, shall be functioning throughout the national territory, under the authority of the Ministry of the Interior...

(f) By the year 2000, the Government undertakes to increase its expenditure on public security as a percentage of gross domestic product by 50 percent over the amount expended in 1995.⁷⁷

As a result of these requirements, the Government of Guatemala has begun to form the nucleus of training for the new National Civil Police. It has received extensive assistance in this area from international sources, the most notable of which is the Spanish Guardia Civil. With the assistance of the Spanish force, two new units were created for the National Police, an information unit and an anti-riot unit.

Despite these positive steps there has been little improvement in the public's confidence in the security forces' abilities to provide adequate protection. MINUGUA noted in its Sixth Report:

56. The persistence of a high level of criminal violence is the main impediment to the enjoyment of human rights in Guatemala...

57. The momentum and political will observed in certain police actions have not been matched by substantial improvements in the overall response to the problem of public security...

58. The recurrence of cases of lynching of alleged criminals confirms the concern expressed by the Mission in its previous report. In a number of cases in which it could be predicted that lynchings would occur because of the population's exasperation at the crime situation, no specific instructions were issued for preventing them and, when they did occur, there was no rapid reaction from the authorities...

61. The already high incidence of kidnapping increased during the period under review. In order to deal with this serious situation, Government

⁷⁷ Agreement on the Strengthening of Civilian Power and on the Role of the Armed Forces in a Democratic Society signed 19 September, 1996; Paragraph 30.

Agreement 90-96 of March 1996 provided for cooperation between the armed forces and the National Police. Recently, at the request of the President of the Republic, this cooperation was expanded to include logistical support from the armed forces Intelligence Department to the National Police anti-kidnapping squad.⁷⁸

While this incident occurred in 1996, before the signing of the Final Agreement in December, the fact that the President found it necessary to utilize the military to provide internal security is troubling. Clearly, despite the agreements with the URNG and the hopes of the citizenry for a truly democratic society, Guatemala still has a long way to go before it can be considered a consolidated democracy in terms of the military's role in society.

3. Judicial reform in Guatemala

The Agreement on the Strengthening of Civilian Power and on the Role of the Armed Forces in a Democratic Society signed on September 19, 1996 in Mexico City accounted for the three other issues which had to be addressed in order for the rule of law to prevail in Guatemala. The first area, which was discussed in section 8 of this portion of the Accords, was the need for the reform and modernization of the Guatemalan judicial system:

8. One of the major weaknesses of the Guatemalan State stems from the system of administration of justice... (which) suffers from faults and deficiencies. The antiquated legal practices, slow proceedings... and lack of supervision of officials and employees... breed corruption and inefficiency.

9. The reform and modernization of the administration of justice should be geared to preventing the judiciary from producing or covering up a system of impunity and corruption. The judicial process is... an instrument for ensuring the basic right to justice, which is manifested in a guarantee of impartiality, objectivity, universality and equality before the law...

⁷⁸ Sixth Report of MINUGUA for the period 1 July to 31 December, 1996; Paragraph 61.

12. Promote the reform of the following articles to the Constitution in the Guatemalan Congress:

(a) Article 203: ... guarantee ... free access to the system of justice in the person's own language; respect for the multiethnic, multicultural and multilingual nature of Guatemala; legal assistance to those who cannot afford their own counsel...

(b) Articles 207, 208 and 209: (establish a) system of appointment and promotion of judges based on competitive examinations to promote professional excellence...

13. Promote the following legal reforms in the Guatemalan Congress:

(b) Establish a Public Defender's Office... to provide legal assistance to those who cannot afford to retain their own counsel. It would be functionally autonomous and independent from the three branches of Government... and have effective country-wide coverage... so that it can be established and begin its activities in 1998.

14. Take such administrative initiatives and measures as are necessary to:

(a) ... *by the year 2000, the Government intends to increase net public expenditure allocated to the judiciary and the Public Prosecutor's Office as a proportion of gross domestic product by 50 percent over its 1995 level.*⁷⁹ (emphasis added)

In its Sixth Report to the Secretary-General, MINUGUA reported on some of the progress which has been made in these particular areas. Two points were noted in particular; first was the establishment of some trial courts in geographical areas which were not covered before. Second, the Public Defender's Office, which was not required to be established until 1998, opened in late 1996 and has "extended its coverage, through the creation of new posts, so that there is now at least one public defender in each department of Guatemala."⁸⁰ One negative indicator for the judicial system is the number of people being detained without trial. "The information obtained by the Mission (MINUGUA) is that only 25.8 percent of the prison population are serving a sentence imposed by final decision of a court; the remaining 74.2 percent are unconvicted

⁷⁹ Agreement on the Strengthening of Civilian Power and on the Role of the Armed Forces in a Democratic Society signed 19 September, 1996; MINUGUA Internet Homepage, <http://www.un.org/Depts/minugua/paz9.html>

⁸⁰ Sixth Report of MINUGUA for the period 1 July to 31 December, 1996; Paragraph 29.

prisoners who have been deprived of their liberty but whose guilt or innocence remains to be established.”⁸¹ So despite numerous positive steps, there are still significant problems with the judicial system in Guatemala.

4. Human rights and impunity in Guatemala

The first accord which specifically addressed the issues of human rights and impunity in Guatemala, the Comprehensive Agreement on Human Rights, was signed on March 29, 1994. In the Preamble of this document, both sides pledged to respect international norms for human rights.

...the commitment of the Government of Guatemala to respect and promote human rights... (and) that the Unidad Revolucionaria Nacional Guatemalteca undertakes to respect the inherent attributes of the human being and to contribute to the effective enjoyment of human rights... agree (that) the Government of Guatemala reaffirms its adherence to the principles and norms designed to guarantee and protect the full observance of human rights, and its political will to enforce them.⁸²

An integral component of this agreement was a commitment by the Guatemalan government to implement measures designed to combat the feeling of impunity which permeated the security forces during the civil war. In Section III of the Accords, which was titled Commitment Against Impunity, the following positions were noted:

1. The Parties agree on the need for *firm action against impunity*. The Government shall not sponsor the adoption of legislative or any other type of measures designed to prevent the prosecution and punishment of persons responsible for human rights violations.⁸³ (emphasis added)

Given the role played by the Civilian Village Defense Committees in the war, and the fact that the members of these organizations were often forced to serve against their

⁸¹ Ibid, Paragraph 66.

⁸² Comprehensive Agreement on Human Rights of March 29, 1994: MINUGUA Internet Homepage, <http://www.un.org/Depts/minugua/paz3.html>

⁸³ Ibid.

will, which is a violation of human rights, both sides agreed that the formation of more of these organizations had to be discontinued:

The Government of Guatemala shall unilaterally declare that it shall not encourage the organization of nor shall it establish further volunteer civil defense committees in any part of the national territory... the (URNG) sees the unilateral statement as a positive expression of the Government's will to achieve peace...⁸⁴

The verification of compliance for each of these commitments was to be achieved through MINUGUA. The functions of MINUGUA in these areas were also clearly laid out in this Agreement:

In verifying human rights, the mission (MINUGUA) shall carry out the following functions:

- a. Receive, consider and follow-up complaints regarding possible human rights violations;
- b. Establish that the competent national institutions are carrying out the necessary investigations autonomously, effectively and in accordance with the political constitution of the Republic of Guatemala and international norms regarding human rights;
- c. Determine whether or not a violation of human rights has occurred on the basis of whatever information it may obtain...⁸⁵

While this agreement called for an international commission to investigate human rights abuses, both sides realized that the truth about all human rights violations which occurred during the war had to be made public in order for the healing and reconciliation process to begin in Guatemala. With this goal in mind, the Government and the URNG, on June 23, 1994 in Oslo, Norway, signed the Agreement on the Establishment of the Commission to Clarify Past Human Rights Violations and Acts of Violence That Have Caused the Guatemalan Population to Suffer. The reasons for the formation of this Truth Commission were stated in the Preamble of the Agreement:

⁸⁴ Ibid, Section V Paragraph 5.

⁸⁵ Ibid, Section X, Paragraph 5.

Whereas the present-day history of our country is marked by grave acts of violence, disregard for the fundamental rights of the individual and suffering of the population connected with the armed conflict;

Whereas the people of Guatemala have a right to know the whole truth concerning these events, clarification of which will help avoid a repetition of these sad and painful events and strengthen the process of democratization in Guatemala;

... Whereas, in this context, promotion of a culture of harmony and mutual respect that will eliminate any form of revenge or vengeance is a prerequisite for a firm and lasting peace...⁸⁶

The Truth Commission was to start its investigations and work for six months from the date the final peace agreement was signed and was charged with investigating human rights violations which occurred during the entire period of the armed conflict. A final report was to be prepared by the Commission and handed over to both sides and to the United Nations who would publish it.⁸⁷ Some limits were placed on the Commissions investigations and report:

Purposes (of the Commission)

To clarify with all objectivity, equity and impartiality the human rights violations and acts of violence... connected with the armed conflict.

To prepare a report that will contain the findings of the investigations carried out and provide objective information.

Operation (of the Commission)

The Commission shall receive particulars and information from individuals or institutions that consider themselves to be affected and also from the Parties...

The Commission shall not attribute responsibility to any individual in its work, recommendations and report nor shall these have any judicial aim or effect. (emphasis mine)

The Commission's proceedings shall be confidential so as to guarantee the secrecy of the sources and the safety of witnesses and informants.⁸⁸

⁸⁶ Agreement on the Establishment of the Commission to Clarify Past Human Rights Violations and Acts of Violence That Have Caused the Guatemalan Population to Suffer; signed June 23, 1994; MINUGUA Internet Homepage, <http://www.un.org/Depts/minugua/paz6.html>

⁸⁷ Ibid.

⁸⁸ Ibid.

Unfortunately, neither of these reports has been published to date. But there was one interesting development in this area which occurred immediately prior to the signing of the Final Agreement on December 29, 1996. On December 18, 1996 the Guatemalan Congress approved the National Reconciliation Law which ordered the dropping of criminal responsibility for political and common crimes that were linked and committed by officials, military members and rebels during the armed conflict.⁸⁹ Furthermore, the Act states:

Linked common crimes are defined as those acts committed during the armed conflict that in a direct, objective, intentional, or causal manner are linked to political crimes... In addition, criminal responsibility is dropped for crimes by state authorities, state institution employees, or members of other lawful forces, which were committed during the domestic armed conflict and before this law came into effect... The law also waives penal responsibility for actions that were executed or ceased to be executed, ordered, or conducted, attitudes that were adopted, or provisions dictated by dignitaries, officials, or state authorities and members of its institutions related to avoiding greater risks.⁹⁰

MINUGUA responded to the passage of the National Reconciliation Law in its Sixth Report to Secretary-General of the United Nations. In this report, "the Mission underscored the importance of excluding from the extinction of liability those human rights violations which had occurred outside the strict framework of the internal armed conflict..."⁹¹ It appears that MINUGUA has decided that this path, while not optimal, was the one chosen by Guatemala's elected legislature and that it should not comment directly on this decision.

⁸⁹ de Mendez, (1996): FBIS-LAT-96-247.

⁹⁰ Ibid.

⁹¹ Sixth Report of MINUGUA for the period 1 July to 31 December, 1996, Paragraph 16; MINUGUA Internet Homepage, <http://www.un.org/Depts/minugua/sixth.html>

D. CONCLUSION

Guatemala has taken some significant strides towards the establishment of the rule of law and democratic consolidation since the signing of the Peace Accords in December 1996. The military, despite the fact that it still holds a high level of prerogatives, has been brought under nominal civilian control and the relative level of prerogatives the military held at the end of the civil war has been reduced. The primary mission of the armed forces has been focused on the defense of the sovereignty of Guatemalan territory from external threats. The police have been removed from the control of the military and have been placed under the command of the Minister of the Interior, who is a civilian. Judicial reform has progressed most notably in the area of military justice. Members of the armed forces may now be tried in civilian courts for common crimes, rather than being tried in secrecy in military courts for all offenses. Also, a new Public Defenders office has been opened and is operating in certain parts of the country, providing free legal services and representation, something which did not exist before the Peace Accords.

The issue of human rights and impunity will be addressed by the Truth Commission. When the Commission issues its report in 1998, there will be no names included nor will there be recommendations for reform of the judicial system or military to prevent future human rights abuses. In addition, the passage of the amnesty law in December 1996 has virtually guaranteed that no human rights crimes will ever come to trial. These facts may result in a continuing sense of impunity within the military, police force and other governmental bodies.

Similar to neighboring El Salvador, the greatest problem which the government faces in Guatemala is the spiraling crime rate, which will provide a source of discontent within the populace. If this situation continues it may force a call from either the government or the common citizens for the military to step in and solve this problem. It is already disturbing that President Arzú has authorized the use of military personnel to augment the civilian police forces in certain areas. The inability of the civilian government and police forces to provide for law and order within their territory could ultimately derail the consolidation of democracy in Guatemala.

V. CONCLUSION: THE STATE OF THE RULE OF LAW IN GUATEMALA AND EL SALVADOR

A. THE ELEMENTS OF THE RULE OF LAW

El Salvador and Guatemala have made progress down their paths towards democratic consolidation in the area of the rule of law. This progress is absolutely necessary due to the fact that respect for the rule of law, by both the citizenry and the government, is a necessary precondition for democratic rule. Laws, and the belief that all members of society are accountable under these laws, is the basis of democratic rule. Positive changes have been made in El Salvador and Guatemala in the three dimensions (behaviorally, attitudinally, and constitutionally) Linz and Stepan identified in their working definition of a consolidated democracy. This chapter will summarize what progress has been made and will also identify some areas and actions where there is cause for concern in the future of the rule of law and democratic consolidation in both countries. Table 5.1 provides a summary of the progress which has been made in the establishment of the rule of law in El Salvador and Guatemala.

1. Redefining the role of the armed forces in the state

The civilian and military leaders of El Salvador and Guatemala have sought to limit the role the military plays within their states. In both countries, the military's primary mission has been shifted to the defense of the state's sovereignty from external threats. The ability of the military to intervene in the internal politics of the state was severely circumscribed by the Peace Accords in both countries. This role reduction for

the military signifies that political society in both countries has begun to accept the basic belief that the

Table 5.1: Progress made in each element of the rule of law since the Peace Accords in El Salvador and Guatemala

	El Salvador	Guatemala
Redefining the role of the armed forces in the state	<ul style="list-style-type: none"> Primary mission of the armed forces has been constitutionally defined as external defense. 	<ul style="list-style-type: none"> Peace Accords called for a constitutional amendment, that has not been enacted to date, which defines the primary mission of the armed forces as external defense.
Demilitarization of the police forces	<ul style="list-style-type: none"> Civilian Police Force (PNC) has been formed and is under civilian control. Limited military involvement in support of internal police operations. 	<ul style="list-style-type: none"> Civilian Police Force (PNC) has been formed and is under civilian control. Limited military involvement in support of internal police operations.
Judicial reform	<ul style="list-style-type: none"> Military personnel can be tried in civilian courts for common crimes. Supreme Court elected by Legislative Assembly. Civil society has input into selection of judges through the National Council of the Judiciary. 	<ul style="list-style-type: none"> Military personnel can be tried in civilian courts for common crimes. Public Defenders office has been opened ahead of schedule. Peace Accords call for 50% increase in funding for judiciary by 2000.
Human rights and the issue of impunity	<ul style="list-style-type: none"> Truth Commission issued report in March 1993. Amnesty law passed five days after Truth Commission report issued. 	<ul style="list-style-type: none"> Truth Commission began work in September 1997. Amnesty law passed in December 1996 before Peace Accords signed.

Source: Author

armed forces of a democracy should be a professional, apolitical institution under objective civilian control.

While the prerogatives of the military have been significantly reduced in both countries as a result of the Peace Accords, it can not be stated that they are under objective civilian control. There is some cause for concern in both countries with regard to this element of the rule of law. Both Salvadoran President Calderon Sol (1996 to present) and Guatemalan President Alvaro Arzú (1994 to present) have begun to use the military to augment their new civilian police forces in the fight against the current crime

waves which are plaguing their countries. In each country, these actions may appear to be evidence of the military once again becoming involved in internal security roles. Both Presidents and many senior military officials have declared these moves as nothing more than temporary actions designed to fill a vacuum until more civilian police cadres are trained and ready to completely assume the internal security role. Salvadoran Army Chief of Staff General Mauricio Duke Lozano declared that the joint patrols are "... not what we (the army) want or don't want. It depends on the president."⁹² While these missions have been legally ordered by the issuance of an executive order in both countries, these actions set a dangerous precedent for the future military involvement in internal roles.

2. Demilitarization of the police forces

Both countries have made significant progress in demilitarizing their police forces and establishing a civilian police force in accordance with the Peace Accords. In El Salvador, the National Public Security Academy was opened on time and new recruits for the Civilian Police Force (PNC) were trained in accordance with the standards set by international instructors and monitors. As of early 1996, over 25,000 members of the PNC had graduated from this institution. Despite these facts, there is still an overwhelming crime problem in the country which threatens to undermine the citizenry's faith in the PNC. A recent article may substantiate this claim:

The statistics on violence in El Salvador are alarming. In a May 1996 national survey, one-quarter of all respondents said someone in their immediate family had been assaulted in the previous four months. Another survey in June and July found that 79 percent of the respondents identified crime as the number one problem they faced.⁹³

⁹² Ibid.

⁹³ Montgomery (1997), p. 61.

Numerous factors have fueled the increase in crime. The availability of weapons left over from the war, a high level of unemployment, and the growth of the drug trade have all contributed to crime throughout El Salvador and Guatemala. This crime wave probably represents the most significant threat to the citizenry's faith in their government's ability to ensure that the rule of law prevails. A recent article from El Salvador declared that more than 200 people were killed in during election violence in March (1997).⁹⁴ As noted in the previous section, President Arzú of Guatemala has been compelled to sign a presidential decree which allows military support for police activities which are aimed at curbing violent crime. El Salvador has also developed a plan, known as *Plan Guardian*, for the army to help the police fight crime in rural areas. A recent article claimed that it is common in El Salvador to see joint patrols walking along the road in the countryside with four to eight soldiers in full battle gear and a police officer in his uniform.⁹⁵

Despite the fact that the militaries are still engaged in internal police functions, there is room for guarded optimism. In both countries, in accordance with the Peace Accords, command of the new police forces has been severed from the military and they are now under the command of the civilian Minister of the Interior. And, when military personnel do participate in joint patrols with the civilian police forces, the senior police officer is in overall command of the patrol.

⁹⁴ AP Newswire (June 1, 1997 214955 EDT), Dateline: Tegucigalpa, Honduras.

⁹⁵ Montgomery (1997), p. 62.

3. Judicial reform

The slow progress of judicial reform is perhaps the cause for the most concern in the re-establishment of the rule of law in both countries. In the Guatemalan Peace Accords there was a provision for a 50% increase in the amount of government funds spent in this area by the year 2000. Little has been done so far in this area due to a lack of funding and other resources. Diamond, Linz and Lipset state that this situation is common throughout the developing world:

... judicial systems in much of the developing world are feeble and ineffective, crippled by endemic corruption, intimidation, politicization, and lack of resources and training... Part of the answer lies in reforms to professionalize, depoliticize, insulate, and decentralize the judicial system. In addition, judges, prosecutors, and investigators need more effective and honest police to protect them from criminal retribution and to attack crime more aggressively.⁹⁶

The current crime wave, which has spawned a high number of lynchings and other extra-judicial punishments in both El Salvador and Guatemala, is indicative of the lack of respect on the part of the citizenry for the judicial system. Also, the previously mentioned statistic that close to 75% of the defendants who are incarcerated in Guatemala are still awaiting trial can only serve to exacerbate the public's frustration with the judicial system. One positive note is that a Public Defender organization, which did not previously exist in Guatemala, opened in 1997 in accordance with the Peace Accords. This should allow all citizens to receive adequate legal representation irregardless of their financial situation in the judicial system.

⁹⁶ Diamond, Linz and Lipset (1995), p. 41.

4. Human rights and the issue of impunity

Human rights complaints against the military and police forces have been significantly reduced since the end of the civil wars. The repeal of the national defense doctrines in both countries have made military personnel subject to prosecution in civilian courts for common crimes. This should improve the judicial system by making its proceedings more transparent. In the past, military personnel who were accused of crimes were tried in a military court and the results of these proceedings were often kept from the public, thereby fueling the citizen's beliefs that military personnel were able to act with impunity.

Little progress has been made, however, in bringing human rights violators from the civil wars in the two countries to justice. Amnesty laws have absolved both government and guerrilla forces from guilt for human rights violations that occurred during the countries' civil wars. Truth Commissions in both countries were formed. As discussed earlier, the Salvadoran Truth Commission issued their report several years ago with numerous recommendations for the prosecution of human rights violations. While none of the accused perpetrators were ever brought to trial, all were removed from their positions in the military. Also, civilian members of the executive and legislative branches of government who were accused of either being accomplices in the crimes or covering them up were forced to resign. This included the complete replacement of El Salvador's Judicial Supreme Court.

In Guatemala, the Truth Commission began its work in September 1997. The commission has been charged with merely recording and publishing accounts of human rights violations for historical purposes. In order to facilitate national healing and

reconciliation the names of the victims and of the accused will not be included in the report and no recommendations for prosecution will result from the report. As of early November 1997 some 3000 'histories' had been received by the Commission. The low number of responses may be due to the fact that there is still fear among the citizenry for speaking about events of the past.⁹⁷

While there are still numerous complaints of human rights violations and about police misconduct, the levels and severity of these reports are substantially less numerous and severe than they were during the civil wars.

El Salvador is significantly ahead of Guatemala in establishing this element of the rule of law. This is primarily due to the time difference between the signing of the Peace Accords. El Salvador has already completed the Truth Commission process, while Guatemala's Truth Commission has just started its work and is expected to issue its report in mid-1998. Amnesty laws in both countries, however, have limited the effects of the issuance of these reports and may serve to perpetuate the sense of impunity.

B. THE RULE OF LAW AND DEMOCRATIC CONSOLIDATION

Juan Linz and Alfred Stepan claim that democratic consolidation occurs when "democracy becomes routinized and deeply internalized in social, institutional, and even psychological life, as well as in calculations for achieving success."⁹⁸ As mentioned in Chapter II, the working definition these authors developed contains three dimensions which a society must meet before democracy can be consolidated. The democratic

⁹⁷ Siglo News newspaper of Guatemala dated 5 Nov 97; available at <http://www.sigloxxi.com/snews/1997/November/Day05/>

⁹⁸ Linz and Stepan (1996), p. 5.

regime and society must be behaviorally, attitudinally and constitutionally stable in order be considered a consolidated democracy.

Despite the differences in the histories of their countries, and the fact that their civil wars ended close to six years apart, El Salvador and Guatemala are at practically the same level of consolidation of their democracies. Behaviorally, both countries' political leadership and citizenry appear to want democracy to succeed. Attitudinally, both countries' democratic regimes appear to enjoy widespread support and most of the anti-democratic segments of society have been pushed far into the margins of the political arena. Constitutionally, both the ruling party and the opposition parties have accepted the democratic "rules of the game" and view democratic contestation as the sole means of attaining power and promoting change. Since the end of their civil wars, no significant movement has arisen in either El Salvador or Guatemala to challenge the legitimacy of the government. In fact, political reconciliation has progressed quite well in both countries. Both the Guatemalan URNG and the Salvadoran FMLN, which formed the core of a disloyal opposition to the governments of their countries, have renounced the use of violence to obtain their political goals and have joined the loyal opposition in their countries' political society. The FMLN, in fact, has performed quite well since the end of the civil war. In nationwide elections held on March 16, 1997, the FMLN won 41 out of 84 seats in the Salvadoran Legislative Assembly, and Hector Silva, an FMLN candidate, won the mayoral office in the national capital of San Salvador.

In terms of the reduction of military prerogatives within the state, there has been significant progress. Table 5.2 contains a summary of the reductions in prerogatives of the militaries which has occurred since the signing of the Peace Accords. When compared

with Table 2.1, the progress made in these particular prerogatives is virtually the same for both countries. Guatemala's progress, however, does lag behind El Salvador's in the first prerogative. This is due to the fact that the Guatemalan National Assembly has not yet enacted many of the constitutional reforms which were agreed to in the Peace Accords.

Table 5.2: Military Prerogatives After Peace Accords in El Salvador and Guatemala

	El Salvador	Guatemala
Constitutionally sanctioned independent role of the military in political system	Military constitutionally limited to the mission of external defense of the sovereignty of the state	Proposed constitutional amendment, that has not been enacted to date, which would limit the mission of the military to external defense
Role the military played in police functions	No military role in internal police functions unless ordered by the President.	No military role in internal police functions unless ordered by the President.
Interaction of the military with the judicial system	Military personnel may be tried in civilian courts for common crimes	Military personnel may be tried in civilian courts for common crimes

Source: Author; based on Stepan's Rethinking Military Politics (1988)

These reductions in prerogatives of the Salvadoran and Guatemalan militaries offer some optimism for the future of democratic consolidation.

Despite these promising signs of political reconciliation and the reduction of military prerogatives, there is still a significant amount of dissatisfaction with both governments' abilities to confront the current crime wave which is sweeping across the region. Increasingly, there appears to be a breakdown in the respect for the rule of law in both countries. The government's inability to provide for public security in both countries may lead to a breakdown of public confidence in the regime. Once this occurs, the military may be tempted, as in the past, to restore order by intervening politically. While there are no signs of this happening in the near future, the recent history of military involvement in politics makes this outcome plausible.

As mentioned earlier, the establishment of respect for the rule of law in both of these countries is a necessary precondition for democratic consolidation to occur. In order to build this respect, both governments must address the shortcomings which have been identified in this thesis. These shortcomings, in order of severity and importance, are: 1) the poor performance of the government in providing for public security; 2) the lack of significant improvement of the judicial processes; 3) the use of the military in an internal policing role, no matter the fact that this is constitutionally legal; and 4) the pervasive attitude of impunity which still infects many government, judicial and military officials. Until these problems are fully and adequately addressed both El Salvador and Guatemala should still be considered in transition to democracy.

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- Framework Agreement for the Resumption of the Negotiating Process between the Government of Guatemala and the "Unidad Revolucionaria Nacional Guatemalteca" (URNG) (1-10-94)
- Comprehensive Agreement on Human Rights (3-29-94)
- Agreement on a Timetable for Negotiations of a Firm and Lasting Peace in Guatemala (3-29-94)
- Agreement on Resettlement of the Population Groups Uprooted by the Armed Conflict (6-17-94)
- Agreement on the Establishment of the Commission to clarify past human rights violations and acts of violence that have caused Guatemalan population to suffer (6-23-94)
- Agreement on Identity and Rights of Indigenous Peoples (3-31-94)
- Agreement on Socio-economic Aspects and Agrarian Situation (5-6-96)
- Agreement on the Strengthening of Civilian Power and on the Role of the Armed Forces in a Democratic Society (9-19-96)
- Agreement on the Definitive Ceasefire (12-4-96)
- Agreement on Constitutional Reforms and Electoral Regime (12-7-96)
- Agreement on the Basis for the Legal Integration of URNG (12-12-96)
- Agreement on the Implementation, Compliance and Verification Timetable for the Peace Agreements (12-29-96)
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